

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of U S WEST  
Communications, Inc. for Approval of Compliance with 47  
U.S.C. § 271(d)(2)(B)

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**Docket No. 00-049-08**

**Staff Report on Checklist Items 3, 7, 8, 9, 10, and 12**



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## Scope of This Report

This report addresses issues associated with the following checklist items:

- Item 3: Access to Poles, Ducts, Conduits, and Rights of Way
- Item 7: 911/E911, Directory Assistance, Operator Services
- Item 8: Directory Listings
- Item 9: Number Administration
- Item 10: Call-Related Databases and Signaling
- Item 12: Local Dialing Parity

The Summary of Findings and Conclusions section of this report identifies the issues raised under each checklist item, including those resolved during the course of the workshops and those that remain in dispute. For those issues remaining in dispute, this summary section describes the recommended resolution of the disagreements. The later sections of this report provide more detailed discussions of the issues, particularly those that remain in dispute. The Summary of Findings and Conclusions and the detailed sections use the same numbering for these disputed issues.

## Background

The purpose of this report is to assist the seven state Commissions (Iowa, Idaho, Utah, New Mexico, North Dakota, Montana, and Wyoming) in reaching a decision as to what recommendations to make to the Federal Communications Commission (FCC) on the question of whether Qwest should be granted the authority to provide in-region interLATA services. To be eligible to provide in-region interLATA service, Qwest must meet the competitive checklist and other requirements of Section 271 of the Telecommunications Act of 1996 (the Act). A Qwest May 4, 2000 filing encouraged the several state commissions to consider a multi-state process to jointly review track A (competition issues), various aspects of the 14-point competitive checklist, Section 272 (separate subsidiary issues), and public interest considerations. Iowa, Idaho, Utah, North Dakota and Montana joined together (with Wyoming joining in September 2000) in a multi-state collaborative proceeding, and issued procedural orders to govern the conduct of joint workshops. The joint workshops provide a common forum for all participants in all the states involved to present, for individual consideration by the six commissions, all issues related to Qwest's Section 271 compliance.

The procedural orders require that the checklist items covered by this report, which were deemed to be the "Less Controversial Checklist Items", be treated differently from all of the other checklist items:

*Based on Qwest's assertion that substantial agreement and progress on checklist items 3,7,8,9,10 and 12 (Poles/Ducts/Conduits, 911/E911, Directory Assistance, Operator Services, White Pages Listings, Number Administration, Signaling/*

*Assoc. Databases, and Dialing Parity) has been reached among parties in other Qwest states and that any outstanding issues should be able to be discussed and resolved among parties without necessitating an in-person workshop, the Commissions agree to develop the record on these checklist items through written filings. Such a process will include the filing of Qwest's case, discovery, comment cycles, and either a joint resolution filed by the parties, or a report from staff (developed with the assistance of the Outside Consultant) to each commission based on the written record. To the extent that agreement cannot be reached on these checklist items, mini-workshops on isolated topics may be scheduled or issues may be deferred to the state commissions for resolution. The remaining checklist items would be addressed through a series of three workshops as outlined below.*

Qwest filed written testimony on these six checklist items on September 5, 2000. AT&T, WCOM, and McLeodUSA filed responsive testimony or comments in October 2000. Qwest submitted rebuttal on November 5, 2000. Qwest submitted a brief, as did AT&T and XO Utah. Both Qwest and AT&T submitted reply briefs on January 22, 2001. The parties were given until the week of February 4, 2001 to identify any New Mexico issues that should also be considered in this report. No notice of the existence of such issues was received. Neither have the parties submitted the proposals for joint issue resolution contemplated by the procedural orders.

This report separately discusses two types of issues:

- Those identified in the filings of the parties but apparently resolved during the workshop process
- Those that remain subject to disagreement, or where it is not clear that the parties have reached agreement.

This report describes the disputed issues in more detail and it presents recommended resolutions of them. It is being submitted individually to each of the six commissions, for their independent determinations on the merits of the issues involved, or for their decision on what additional evidence, comment, or argument, if any, should be held as part of their deliberations precedent to providing consultation to the Federal Communications Commission.

## **“Frozen” SGAT Language**

We have adopted a general rule that requires Qwest to file, before briefing of the issues a copy of SGAT language related to those issues. This language is intended to reflect language on which there is general agreement among the parties and language proposed by Qwest to address issues or language on which there is not general agreement. The purpose of this language is to provide a reference base first for the participants' briefs and second for the commissions in reviewing this report. It is not intended to offer new language that has not before been seen or discussed in workshops, filings, or discussions among the parties.

This rule came into being after the participants filed briefs on the issues addressed in this report. Qwest filed the required language here on March 5, 2001. The language is set forth as an appendix

to this report. Therefore, the participants have not had a chance to brief any disagreements with any language that Qwest may have added or changed since its original and rebuttal filings on the issues addressed by this report. The parties may do so in any response they provide to the individual commissions within the 10-day response period provided.

This report assumes that the SGAT language filed by Qwest on March 5, 2001 will remain in effect, except as commission acceptance of any of the findings and conclusions of this report may require such language to change. Therefore, to the extent that any further proposed changes in SGAT changes are proposed (e.g., as a result of agreements reached in similar workshops in other states) they must be separately filed and supported, in order that the commissions may consider any issues associated with such proposed language changes. Absent individual commission approval of any such proposed changes, the language set forth in the appendix hereto shall be considered to be the final language for purposes of any state SGAT review or consultation with the FCC under Section 271.

## **Summary of Findings and Conclusions**

### **Preliminary Issue: CLEC-Specific Information**

AT&T and a number of other CLECs argued that they did not need to present evidence in these workshops concerning their experiences with Qwest service. Rather, most of the CLECs in this proceeding have focused upon SGAT terms and conditions and have not submitted evidence on Qwest's provision of service. In an early ruling, the outside consultant informed all parties that they must raise all relevant issues in this proceeding and that failure to do so could foreclose later arguments before the individual commissions that they were not given the opportunity to raise specific issues about the quantity and quality of Qwest's service.

### **Checklist Item 3; Poles, Ducts, Conduits and Rights of Way**

Qwest addressed compliance with the requirements of this checklist item in the direct and rebuttal testimony of Mr. Freeberg. Qwest's evidence that it is providing access now in the participating states was not substantially challenged. Other participants did, however, raise many issues about that compliance. One of them, the non-recurring charge issue of XO Utah, will have to be addressed elsewhere; these workshops are not intended to be costing proceedings. In response to some twenty others, Qwest either made SGAT changes that resolve the underlying concern, or it provided an adequate explanation in support of existing SGAT language. Nevertheless, a significant number of issues remained in dispute (including in this count several McLeodUSA issues that were not pursued after its original list of questions). Those that do not merit further SGAT change include:

1. Reciprocity of Access Obligations: Qwest removed the language that had given rise to the concern
2. Defining Ownership or Control Rights: CLECs did not identify any further changes (beyond those Qwest agreed to make) needed to address the underlying concerns

4. Scope of Access in the MDU Environment: CLECs also did not identify any further changes (beyond those Qwest agreed to make) needed to address the underlying concerns
8. Payment for Facility Re-arrangement Costs: Qwest's existing SGAT language is already appropriate
9. Inspection Costs: the SGAT already limits the application of costs in a reasonable way
10. Time Limits for Remedying Non-Complying Attachments: the SGAT logically adopts a case-by-case approach for establishing limits
11. Schedules and Fees for Inspections: the SGAT appropriately allows consideration of individual CLEC performance history and the needs of particular inspections in setting schedules and fees
12. Unauthorized Attachment Fee Waiver

However, there are three cases in which the participants have identified the need for alteration of the SGAT, in order to satisfactorily establish that Qwest has a legal obligation to serve in a manner that comports with the intent and requirements of this checklist item:

3. Access to Landowner Agreements: CLECs should be given an option, at their risk, to obviate the need for prior landowner consent to secure access to the agreements
5. Curing CLEC Breaches: the obligation for CLECs to secure cure provisions from landowners should be eliminated
6. Large-Request Response Times: Qwest should not have defined cases where it can be relieved of the 45-day interval, but should be able to secure relief on a case-by-case basis.

Qwest should not be deemed to be in compliance with this checklist item before it makes the changes necessary to deal with these three issues. However, upon making those changes, Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item. It is not appropriate to hold this checklist item open for consideration of as-yet unidentified right of way issues that may arise in the emerging services workshop. The participants have agreed that any such issues, if they arise at all, can be adequately dealt with in the workshops and report that will address emerging services.

### **Checklist Item 7(I); 911/E911**

Qwest addressed compliance with the requirements of this checklist item in the Direct and Rebuttal Testimony of Margaret Bumgarner. AT&T stated in the affidavit of Kenneth Wilson that it had no remaining disputes about this item; moreover, AT&T's brief made no mention of this item. All previously disputed issues with respect to Qwest's compliance with this checklist item have been resolved in prior workshops in other states. Qwest has made amendments reflecting the agreed to resolutions in the six state SGATs.

McLeodUSA raised several questions about the item 7(I) provisions of the SGAT, but did not expressly contest any issue. Qwest has provided responsive answers to those questions; the responses justified the current SGAT treatment of the underlying issue; and McLeodUSA filed no brief item.

Qwest has met its burden of proof and, as there are no further issues to be resolved, except for the number porting issue, which can be adequately addressed under Workshop One. Qwest has supported a finding that this checklist requirement has been met, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item.

### **Checklist Item 7(II); Directory Assistance**

Qwest addressed operator services and directory assistance in the Direct and Rebuttal Testimony of Lori Simpson. AT&T commented on compliance with checklist item 7(II) (Directory Assistance), and noted that its issues of concern were resolved in workshops in other states. Qwest made changes to the Six State SGATs to reflect these resolutions.

McLeodUSA raised several questions about the item 7(II) and (III) provisions of the SGAT, but did not expressly contest any issue. Qwest has provided an answer to those questions; Qwest also agreed to several SGAT revisions to respond to McLeodUSA's questions. McLeodUSA filed no brief on this checklist item.

WCOM argued that bulk transfer of the CNAM database should be required as a UNE. However, WCOM failed to establish the existence of the circumstances or conditions necessary to a determination that such a UNE should be created in the participating states. Additionally, WCOM did not make a showing that would call for the conclusion that it should be entitled to bulk transfer of the entire CNAM database as a UNE.

The evidence submitted by Qwest therefore supports a finding that it has complied with this checklist item, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item.

### **Checklist Item 7(III); Operator Services**

Qwest presented the direct and rebuttal testimony of Lori Simpson on the issue of operator services. McLeodUSA raised several questions about the item 7(III) provisions of the SGAT, but did not expressly contest any issue. Qwest has provided an answer to those questions; Qwest also agreed to several SGAT revisions to respond to McLeodUSA's questions. McLeodUSA filed no brief on this checklist item. No other party filed any comments or testimony on this item.

Qwest has supported a finding that this checklist requirement has been met, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item.



## Checklist Item 8; White Pages Directory Listings

Qwest addressed compliance with the requirements of this checklist item in the direct and rebuttal testimony of Lori Simpson, which discussed Qwest's commitment to provide nondiscriminatory access to white pages directory listings and the Company's processes and procedures for providing listings. AT&T and McLeodUSA commented on Qwest's compliance with this checklist item. Qwest's evidence that it is providing access now in the six states was not substantially challenged. Other participants did, however, raise a number of issues about that compliance. In response to a number of them, Qwest either made SGAT changes that resolve the underlying concern, or it provided an adequate explanation in support of existing SGAT language. Nevertheless, a significant number of issues remained in dispute (including in this count some McLeodUSA issues that were not pursued after its original list of questions). Those that do not merit further SGAT change include:

2. Reciprocity in Release of Listings: McLeodUSA appeared to ask for the CLEC right to release Qwest listings if the CLEC gave the same right to Qwest as to its listings, an approach that is not appropriate from a business perspective and that would be impracticable to administer, even if it were appropriate
3. Applicability of Tariff Liability Limits: the SGAT is actually consistent with existing tariffs
4. CLEC Knowledge of State Laws Involving Listings: CLECS should be responsible for following the requirements of state law when they provide Qwest with information about their own customers
5. Adding a Section 222(e) Reference to SGAT Section 10.4.2.16: McLeodUSA provided no justification or rationale for this addition
7. Dex's Continuation as Directory Publisher: McLeodUSA's concern can be adequately handled if and when Dex no longer publishes directories.

However, McLeodUSA did raise one issue that identified the need for alteration of the SGAT, in order to satisfactorily establish that Qwest has a legal obligation to serve in a manner that comports with the intent and requirements of this checklist item:

6. Adding the Term Contractor to Section 10.4.2.26: If Qwest should contract with a non-affiliate to publish directories, that contractor should have the same obligations as Qwest or its affiliates with respect to customer guide pages.

In addition, there is one issue that must remain open pending the completion of OSS testing and the consideration by the commission of the results of that testing:

1. Parity of treatment for CLEC listings: Qwest has yet to complete changes that it agreed to make in response to findings from the Performance Measures audit.

Qwest should not be deemed to be in compliance with this checklist item before:

- It makes the changes necessary to deal with the "contractor" issue

- The states have considered the results of efforts to change methods for updating directory listings for CLECs.

However, subject to these two qualifications, Qwest can be deemed to have met its burden of proof, subject also to the completion and commission consideration of the results of any other OSS testing that may relate to the item.

### **Checklist Item 9; Numbering Administration**

Qwest addressed number administration issues in the Direct and Rebuttal Testimony of Margaret Bumgarner. AT&T submitted comments on this checklist item; AT&T has acknowledged that its concerns about this checklist item can be deferred to other workshops or addressed after the completion of OSS testing. Concerns about the Qwest policy to provide CLECs one Local Routing Number ("LRN") per LATA was deferred to the workshop addressing Item 1. AT&T's concerns about number reassignment when numbers are ported have been deferred to the Workshops on Item 11. AT&T also agreed that its concerns about provisioning NXX prefixes would be evaluated in the ROC proceedings.

All issues, except for a narrow and procedural one appear to have been either resolved or moved to the roster of Workshop One issues. The remaining issue is whether there should be a conditional determination of Qwest compliance pending review of audited performance results or whether no determination should be made until after those results become available.

Qwest has met its burden of proof and as there are no further issues to be resolved, except for those to be dealt with in other workshops. Qwest has supported a finding that this checklist requirement has been met, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item.

### **Checklist Item 10: Call-Related Databases and Signaling**

The AT&T concerns appear to be resolved. The WCOM issue that Qwest says is an Item 10 issue is discussed under Item 7II of this report, because WCOM raised it in that context. Qwest responded to the questions raised by McLeodUSA, which filed no further testimony or comment, and which did not file a brief. It appears from the responses of Qwest and the lack of follow-up by McLeodUSA that Qwest has adequately answered its questions.

Qwest addressed access to signaling and call-related databases in the Direct and Rebuttal Testimony of Margaret Bumgarner. AT&T and McLeodUSA commented on this checklist item. All of AT&T's concerns and issues have been resolved in prior workshops in other states. McLeodUSA raised questions about the meaning of certain SGAT terms, but did not take specific issue on Qwest's compliance with this checklist item. Ms. Bumgarner answered McLeodUSA's questions in her Rebuttal Testimony, at pages 14-15.

## **Checklist Item 12: Local Dialing Parity**

Qwest addressed dialing parity in the Direct and Rebuttal Testimony of Margaret Bumgarner. AT&T expressed a concern about this checklist item, but stated that it was resolved in Arizona workshops. (See Wilson Affidavit at 22). In its Second Report and Order implementing the local competition provisions of the Act, the FCC determined that performances measures are unnecessary for this checklist item,<sup>1</sup> and, therefore, the ROC has not established any for it. Therefore, there are no unresolved issues concerning this checklist item.

## **Deferred Issues**

Several issues raised in this workshop have been deferred to other workshops or to other proceedings. They are as follows:

- Non-recurring charges for inspections – this issue, raised by XO Utah, will now be addressed in state cost dockets.
- MDU access – deferred to the workshop on subloops.
- Impact of number porting on 911 – deferred to Workshop 1.
- Parity of treatment for CLEC listings – deferred to the completion of OSS testing.
- Local Routing Number (LRN) – to be considered with Checklist 1 issues
- Number Reassignment – to be considered with Checklist 11 issues
- Provisioning of NXX prefixes – conditional approval granted subject to results of OSS tests.

## **Preliminary Issue: CLEC-Specific Information**

AT&T set forth a generally appropriate standard applicable to Section 271 compliance.<sup>2</sup> Specifically, two distinct requirements apply:

- Qwest must demonstrate that it has a concrete and specific legal obligation to provide a checklist item consistently with the requirements of Sections 271, 251 and 252 of the Act. This burden may be met through approved interconnection agreements (“ICAs”) or a statement of generally available terms (“SGAT”).
- Second, it must be found that Qwest currently furnishes or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality.

AT&T further argued that these workshops can only focus on the first portion of the test, i.e., the existence of the legal obligation, which is largely a function of what Qwest’s SGAT provides.

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<sup>1</sup> *Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98 et al., FCC 96-333, 11 FCC Rcd 19392 ¶ 162 (Aug. 8, 1996).*

<sup>2</sup> *See AT&T’s Statement of Position and Brief on Certain Remaining Non-OSS Related Checklist Items, 12/22/00 at 1-3 (hereafter AT&T’s Brief)*

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AT&T believes that the second portion of the test; i.e., what Qwest currently furnishes or has the capability to furnish must await ROC test completion.

AT&T's assertion about the second portion of the Section 271 compliance standard misapprehends the nature and scope of these workshops. Moreover, the correct nature of the workshops has been repeatedly made clear to AT&T and the other participants, most concisely in the Ruling on Submission of State-Specific Information dated November 2, 2000, issued by the workshop coordinator. That ruling makes quite clear that the participating commissions intend these workshops to give a full and timely opportunity to address the second element of the standard (furnishing or readiness to furnish) in these workshops. All parties have been on notice for a long time that the commissions consider this the opportunity to raise all issues relevant to checklist compliance.

These states, whose resource limits were known to be a principal reason for joining together at the outset of consideration of joint proceedings, never anticipated an extended workshop process followed by potentially equally complex and time consuming individual proceedings to follow. What products and services Qwest currently furnishes, how it furnishes them, and its readiness to furnish them, whether generally or to individual CLECs, is unquestionably relevant to these workshops and every participating commission expects CLECs to have addressed it.

AT&T has cited OSS testing by the Regional Oversight Committee (ROC) as a reason why the second portion of the standard cannot be addressed in these workshops. That testing will indeed continue after some, perhaps all, of the workshops. However, that testing is not intended to provide an assessment of the products and services that Qwest currently provides to each CLEC individually. Nor is it designed as an examination of the nature of existing relationships between Qwest and individual CLECs. While it forms an important part of the process by which Qwest must demonstrate Section 271 compliance to the thirteen states participating (including all that are participating in these workshops), it bears on issues beyond individual CLEC experiences in dealing with Qwest in relationships about which the checklist items focus.

It is true that states will later consider the results of ROC testing, which will address the capability of Qwest to provide service (in certain respects) and the reliability of its measurement of service-quality results. CLECs are presumably free to present evidence of their own experience for the purpose of buttressing or countering the results of that test; however, that CLEC experience is parallel to, not at the heart of, what OSS testing is intending to examine. Thus, while it is not timely to expect CLECs to present evidence and comment on "testing" issues now, no reason precludes or inhibits any participant in these workshops from addressing, as they have been asked to address, how their own experiences with Qwest to date bear upon the second portion of the standard against which Qwest's performance is being examined in these workshops.

All participants have been fully and repeatedly advised that information about the service that they have been getting from Qwest is relevant now, both in terms of the quantity and quality of that service. All that is being deferred is the ability to present evidence that relates to the findings and conclusions that result from the testing of Qwest's OSS and the auditing of its performance measurements.

CLECs have focused virtually entirely upon the SGAT terms and conditions; i.e., the legal obligation portion of the applicable standard. They have, by and large, presented no substantial evidence to suggest that Qwest either is not providing or is not standing ready to provide service of adequate quality and quantity. Qwest, on the other hand, has presented evidence that it is providing access under the checklist items relevant here. Of course, it must be recognized that OSS testing may produce results that bear upon this standard. Should that be the case, then nothing here concluded should be considered a barrier to the consideration by the participating commissions of Qwest's meeting of the second standard. Moreover, CLECs have, despite the clear ruling on the scope of these workshops, indicated that they continue to reserve the right to bring their experiences before the individual commissions (for purposes beyond addressing the findings of the OSS testing), despite being made aware that the commissions may find such efforts untimely.

The remainder of this report focuses upon the first standard, there having been no substantial evidence presented to challenge Qwest's meeting of the second element of the applicable standard.

### **Checklist Item 3: Access to Poles, Ducts, Conduits and Rights of Way**

#### **Background**

Section 271(c)(2)(B)(iii) requires "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of Section 224."<sup>3</sup> Section 224(f)(1) requires that a "utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."<sup>4</sup> The FCC has interpreted this requirement in its *Bell South Second Louisiana* decision. The FCC concluded there that nondiscriminatory access was shown, *inter alia*, through the establishment of nondiscriminatory procedures for evaluating facility requests and granting access to information on facility availability, two issues that have been raised here.

Qwest reported that, as of September 30, 2000, it was providing space to CLECs on 843 poles and in 109,106 feet of duct in Idaho, Iowa, Montana, North Dakota, Utah, and Wyoming. Qwest has not received CLEC orders for access to rights-of-way in any of the six states. Qwest provided a summary of access to its poles in each of the six states:

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<sup>3</sup> *BellSouth Second Louisiana Order*, ¶ 171.

<sup>4</sup> 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

State	CLECS	Poles
ID	1	245
IA	3	350
MT	1	72
ND	2	108
UT	6	31
WY	1	37

The following table shows the number of CLECs Qwest reports as having access to its ducts as of September 30, 2000.

State	Number	Feet
ID	0	0
IA	5	34,062
MT	1	240
ND	1	196
UT	6	74,608
WY	2	11,168

## Issues Outside The Scope Of These Workshops

### 1. *Nonrecurring Charges for Inspections*

XO Utah's brief asserted that Qwest's SGAT Exhibit A includes non-recurring charges for inspections to determine if sufficient space is available for attachment or occupancy and that such are undocumented and excessive.<sup>5</sup> XO Utah acknowledged that the costs for services are not at issue in these workshops. XO Utah contended that Qwest cannot demonstrate checklist compliance until the Utah Commission sets just and reasonable rates. The Utah Commission has opened two cost dockets: Docket No. 00-049-105 to set UNE prices and Docket No. 00-049-106 to set collocation prices. Several other commissions have similarly opened cost dockets. Therefore, the issue of nonrecurring charges for inspections will be deferred to the cost dockets in each individual state.

## Issues Resolved During This Workshop

The participants raised a number of issues about which they have been having ongoing dialogue, particularly in section 271 workshops in other Qwest states. Many of those issues have been resolved among the parties contesting them. The later filings in this workshop and the briefs of

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<sup>5</sup> *Brief of XO Utah on Initial Checklist Items, at 1-2.*

the parties explain these resolutions. Other participants, particularly McLeodUSA, raised a number of questions in their initial comments. Qwest generally responded to those questions by providing in its rebuttal filing answers explaining the rationale for the SGAT provisions questioned or by making SGAT changes to address those questions that raised underlying concerns (a number of the questions were manifestly intended only to seek explanation, not to raise specific concerns).

The parties' resolutions of the issues on which they have come into agreement are reasonable and appropriate; Qwest's answers to questions explaining the basis for SGAT sections questioned and the Qwest SGAT changes reasonably respond to the concerns that appear to have underlain other McLeodUSA's questions. Moreover, McLeodUSA made no further inquiry or comment, nor did it file a brief following Qwest's response to the questions raised. Therefore, it is appropriate for the commissions to consider these issues, which are briefly described below, to have been resolved in a manner that is consistent with the public interest and with the requirement that Qwest comply with checklist item 3.

### *1. Ownership of Innerduct*

AT&T raised concerns about Section 10.8.1.2, regarding the issue of ownership of innerduct that a CLEC places in an empty Qwest duct. Qwest modified Section 10.8.1.2 of the SGAT to accommodate this concern.<sup>6</sup>

### *2. Access to Rooftop Space*

AT&T noted that Qwest did not specifically grant access rights to rooftop space on Qwest buildings. Qwest agrees that Section 10.8.1.3 includes such access where the space is owned or controlled by Qwest.<sup>7</sup>

### *3. Maps, Reports, and Plans*

AT&T said that Qwest should be obligated to provide relevant plats, maps, engineering reports and other data relating to facilities to which CLECS seek access within a reasonable time, not to exceed 60 days. Qwest has proposed changes to Section 10.8.2.4 to address this concern.<sup>8</sup>

### *4. Limitations on Construction of Poles/Innerduct*

AT&T said that Section 10.8.2.5 ambiguously limited Qwest's obligations to construct, install, modify, or place poles and innerduct by referring only to the Pole Attachment Act of 1934 or to other factors as "expressly" provided in the SGAT. Qwest has agreed to incorporate all other relevant state and municipal laws into this section's standard.<sup>9</sup>

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<sup>6</sup> *Affidavit of Dominick Sekich Regarding Access to Poles, Ducts, Conduits, and Rights-of-Way (hereafter Sekich Affidavit)* at 9.

<sup>7</sup> *Sekich Affidavit* at 9.

<sup>8</sup> *Sekich Affidavit* at 9.

<sup>9</sup> *Sekich Affidavit* at 9-10.

### 5. *Causes for Denying Access*

AT&T said that the SGAT failed to provide that Qwest might only deny an access request for reasons of safety, reliability and generally applicable engineering purposes, to be applied in a nondiscriminatory manner. AT&T sought recognition that Qwest must pursue a nondiscriminatory policy of facility modification if existing facilities have insufficient capacity, and that Qwest must make good faith efforts to accommodate parties seeking access. Qwest revised section 10.8.2.6 to address AT&T's concern.<sup>10</sup>

### 6. *Reservation of Space*

AT&T said that the SGAT was silent on when and how Qwest could reserve space for itself. This silence raised a concern about applicable prohibitions on Qwest's ability to reserve space for itself. Qwest revised Section 10.8.2.6 to address this AT&T issue.<sup>11</sup>

### 7. *Central Office Manhole Splices*

AT&T objected to what it considered a discriminatory prohibition on CLEC splices in the central office manhole, because Qwest was not similarly prohibited from doing so. Qwest amended Section 10.8.2.9 to resolve this concern.<sup>12</sup>

### 8. *Equipment Replacement Costs*

AT&T expressed concern that the SGAT did not reflect a number of FCC requirements about the cost of replacement or modification of existing poles, ducts, conducts or innerduct. Qwest revised Section 10.8.2.10 to conform its cost requirements to the relevant requirements in the FCC Orders.<sup>13</sup>

### 9. *Inspection Costs*

AT&T said that Sections 10.8.2.15 and 10.8.2.16 required CLECs to pay for inspections during and after construction, while permitting Qwest to disclaim liability for such construction and inspections. AT&T argued that this dichotomy allowed Qwest to be paid without assuming any responsibility. Qwest has agreed to delete the Section 10.8.2.16 provision that disclaimed such liability.<sup>14</sup>

### 10. *Qwest's Right to Terminate Orders*

AT&T voiced concerns about Qwest's ability to terminate an order for poles, ducts, conduits and rights-of-way in Section 10.8.2.18. AT&T was concerned that the lack of a precise SGAT

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<sup>10</sup> *Sekich Affidavit at 10.*

<sup>11</sup> *Id.*

<sup>12</sup> *Sekich Affidavit at 11.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*



definition of “cause” would allow Qwest too much discretion in terminating orders for poles, ducts, conduits and rights-of-way. Qwest made changes to this provision to address this issue.<sup>15</sup>

#### *11. CLEC Use After Qwest Facility Abandonment*

AT&T said that an earlier version of SGAT Section 10.8.2.19 required CLECs either: (a) to stop the use of poles, ducts, conduits and rights-of-way when Qwest decides to abandon them, or (b) to buy the facilities from Qwest. AT&T believed that the SGAT appeared to preclude CLEC rights to ongoing use of poles or innerduct after Qwest has transferred them to another party (e.g., by sale). This preclusion could be expensive and disruptive to existing service for CLECs. AT&T sought provisions in any contract for sale of poles, innerduct or rights-of-way that protect existing and continuing CLEC use. AT&T also wanted Qwest to further protect CLECs’ interests in poles, ducts, conduits and rights-of-way when Qwest sells an entire exchange. Qwest amended the SGAT section to accommodate these concerns.<sup>16</sup>

#### *12. Inspection Costs*

Section 10.8.2.14 allowed Qwest to recover the costs of any Qwest inspection that discovered a violation, hazard, or other breach of the SGAT. AT&T objected to the lack of a materiality standard qualifying this right of recovery. Qwest agreed to limit recovery of its inspection costs to cases where a verified material violation or breach has occurred, as Section 10.8.2.20 defines them.<sup>17</sup>

#### *13. Recording MDU Agreements*

AT&T opposed the requirement that it record its interest in Qwest MDUs. WCOM<sup>18</sup> made a similar argument. In order to resolve this issue, Qwest revised Exhibit D of its SGAT to eliminate this requirement. (See rebuttal Exhibit QWE-TRF-6).

#### *14. CLEC Ownership and Control of Innerduct:*

McLeodUSA questioned what the SGAT Section 10.8.1.2 term “control” means generally and with regard to reserving spare innerduct capacity, and whether a CLEC can provide its own conduit.<sup>19</sup> Qwest responded<sup>20</sup> that the changes it proposed should answer the general question. Qwest also said that it maintains control of all spare innerduct within Qwest’s ducts, by whomever it has been placed. However, CLECs retain ownership of facilities that they place. Qwest will allow CLECs to reserve space in innerducts that CLECs place in Qwest ducts, subject to dealing with any concerns about space “hoarding.”

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<sup>15</sup> *Id.* at 11-12.

<sup>16</sup> *Id.* at 12.

<sup>17</sup> *Id.*

<sup>18</sup> WCOM Comments on Checklist Items 3, 7, 8, 9, 10 and 12 (hereafter WCOM) at 13-16.

<sup>19</sup> McLeodUSA’s Comments on Subsections 271(c)(2)(B)(iii), (vii)-(x), and (xii), of the Competitive Checklist, October 17, 2000 (hereafter McLeodUSA’s Comments).

<sup>20</sup> In the Rebuttal Testimony of Thomas Freeburg, 11/03/00, (hereafter Freeburg Rebuttal Testimony) at 13-23 Qwest responded to McLeodUSA’s comments on checklist item 3.

### 15. *Filling Conduits to Capacity*

McLeodUSA questioned why there exists an SGAT Section 10.8.2.6 obligation to fill conduits to capacity.<sup>21</sup> Qwest responded that it is standard ILEC procedure to install three innerducts simultaneously. Filling them to capacity at one time is both more practical, efficient, and prudent, because it avoids the risk of damaging existing facilities, which can occur when installation does not occur all at once. Qwest noted that it charges CLECs only for installation labor, not for innerduct material, and that the spare capacity created is available for all carriers.

### 16. *Feasibility Study Intervals*

McLeodUSA questioned whether the SGAT Section 10.8.2.7 time frame for completing feasibility studies is 10 calendar days.<sup>22</sup> Qwest said that the feasibility study is incorporated into the 45-day response time for a standard request, and that there is not a separate interval for reporting feasibility-study results.

### 17. *Cost Sharing*

In cases where Qwest must secure additional authority to allow CLEC occupancy, McLeodUSA questioned whether, under SGAT Section 10.8.2.8, Qwest will share costs if it has other uses for the legal authority it acquires, provided that they arise within a reasonable period of time.<sup>23</sup> Qwest responded that it would consider joint requests with CLECs to secure authority, but that the occasions likely to be involved are too speculative to reduce to SGAT language. McLeodUSA also questioned SGAT Section 10.8.2.10 limits on when usage by another party must commence (for cost-sharing purposes) and limits on contributions by additional parties seeking use. Qwest said that the SGAT already deals with carriers using the facilities at the time of modification; therefore it interpreted McLeodUSA's question as relating to subsequent users. Qwest proposed new SGAT language, which it said tracked the FCC language of the Local Competition Order and the Order on Reconsideration, to address the issue:

*10.8.2.10.3 The modifying party or parties may recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. The proportionate share of the subsequent attacher will be reduced to take account of depreciation to the pole or other facility that has occurred since the modification. The modifying party or parties seeking to recover modification costs from parties that later obtain attachments shall be responsible for maintaining all records regarding modification costs. Qwest shall not be responsible for maintaining records regarding modification costs on behalf of attaching entities.*

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<sup>21</sup> *McLeodUSA's Comments at 1.*

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

## 18. *Qualifications, Training, and Contractor Approval*

McLeodUSA questioned: a) how one can determine under SGAT Section 10.8.2.17 what the qualifications and training of Qwest workers are, and b) how one can determine what contractors have been approved by Qwest.<sup>24</sup> Qwest responded that its language tracks FCC limits on imposing on third-party workers qualifications comparable to those applied to Qwest's own workers. With respect to approved contractors, Qwest's rebuttal witness Freeberg said that Qwest would tell CLECs whether Qwest has approved a contractor that the CLEC proposes to use. Qwest provided responsive answers to McLeodUSA's remaining questions.

## 19. *Definition of an "Order"*

McLeodUSA questions how the term "order" as used in SGAT Section 10.8.2.18 is defined.<sup>25</sup> Qwest responded that it is defined for this context in SGAT Section 10.8.4. Qwest provided responsive answers to McLeodUSA's remaining questions.

### **Issues Remaining in Dispute – Checklist Item 3**

#### 1. *Reciprocity of Access Obligations*

AT&T objected to the SGAT requirements that imposed on CLECs reciprocity of access obligations concerning poles, ducts, conduit and rights of way. SGAT Section 10.8.1.4 imposed on Qwest and an interconnecting CLEC obligations to "afford access to its poles, ducts, conduits and rights-of-way of telecommunications services to the other party." AT&T argued that the Act and the FCC's implementing rules and orders do not obligate the CLECs to provide Qwest access. Section 251(b)(4) of the Act imposes on each LEC "the duty to afford access ... to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title." The FCC has determined<sup>26</sup> that Qwest is not a telecommunications carrier, because of the Section 224(a)(5) provision that excludes "incumbent local exchange carriers" from the definition of "telecommunications carriers" for purposes of § 224. The Ninth Circuit recently upheld the FCC's interpretation.<sup>27</sup> Therefore, AT&T argued that SGAT Section 10.8.1.4 should be amended to delete reciprocal access requirements.

WCOM made a similar argument.<sup>28</sup>

Qwest has modified its position to respond to the Ninth Circuit's order, which came after its initial testimony filing. Qwest has agreed to eliminate the reciprocity provision from the SGAT. Qwest's Exhibit QWE-TRF-5 shows that SGAT Section 10.8.1.4 has been stricken entirely. However, Qwest did note separately that, while all reference to reciprocal obligations have been removed from the SGAT, it reserves any rights it may have to seek access to CLEC facilities under state law.

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<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> See 47 C.F.R. §§ 1.1403(a), 1.1402(h), § 51.219 and *Local Competition Order*, ¶ 1231.

<sup>27</sup> *U S WEST Communications v. Hamilton*, 2000 WL 1335548 (9<sup>th</sup> Cir. Sept. 13, 2000).

<sup>28</sup> *WCOM* at 8-11.

**Proposed Issue Resolution:** Qwest's removal of the reciprocity language in its entirety responds fully to AT&T's concern. While AT&T continued to argue this issue in its brief,<sup>29</sup> there is no foundation for arguing that Qwest inappropriately seeks reciprocal obligations as to access to poles, ducts, conduits, and rights of way.

## 2. *Defining Ownership or Control Rights*

AT&T raised a concern that the SGAT did not provide assurances to CLECs that Qwest would provide access where it "controls" rather than "owns" the facilities involved. More narrowly, the concern related to cases where Qwest's control of rights of way was less than "direct."<sup>30</sup> WCOM expressed similar concerns.<sup>31</sup> Qwest addressed much of this concern through revisions to SGAT Sections 10.8.1.1 and 10.8.1.2. The remaining disagreement concerns a difference in the language that AT&T and Qwest propose for Section 10.8.1.5. Qwest did, as AT&T requested, expand the section to include granting access beyond those cases where Qwest's rights of occupancy amount to a legally conveyable property interest. Qwest changed the language to include cases where it can "provide access to a third party and receive compensation for doing so."<sup>32</sup> AT&T's proposed Section 10.8.1.5 language goes further, providing that phrase "ownership or control to do so" also means:

*(ii) the authority to afford access to third parties as may be provided by the landowner to Qwest through express or implied agreements, or (iii) through Applicable Rules*

**Proposed Issue Resolution:** It is not clear that Qwest's language encompasses all access situations that may be relevant. The FCC has stated that:

*we conclude that a right-of-way exists within the meaning of Section 224, at a minimum, where (1) a pathway is actually used or has been specifically designated for use by a utility as part of its transmission and distribution network and (2) the boundaries of that pathway are clearly defined, either by written specification or by an unambiguous physical demarcation.*<sup>33</sup>

The FCC test clearly contemplates situations beyond those where occupancy is authorized by commonly used means. It should be clear from the SGAT that cases where Qwest's underlying rights are implied (rather than express) under state law should be accommodated. There are two difficulties with Qwest's proposal, one of which arises from its words and the other from how Qwest describes it, particularly in its brief. First, Qwest's wording makes its obligation to provide access a function of whether or not it may receive compensation for providing it. Whether Qwest can or cannot charge for providing access to a CLEC should not be the test; the only material test should be whether anything prohibits Qwest from allowing access to a CLEC.

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<sup>29</sup> AT&T's Brief at 6-8.

<sup>30</sup> AT&T's Brief at 10.

<sup>31</sup> WCOM at 14.

<sup>32</sup> Qwest's Legal Brief on Checklist Items 3,7,8,9,10, and 12 (hereafter Qwest's Brief) at 11.

<sup>33</sup> MTE Order, ¶ 82. (Citations omitted).

Second, Qwest appears to have a specific concern about allowing access to a CLEC where Qwest's rights arise by implication under state law. Its SGAT language does not expressly exclude such situations, but there is reason to believe that how Qwest may intend to interpret that language may create delay and confusion, if the SGAT is not made clear on the matter.

Accordingly, it is appropriate to include in the SGAT clause (ii) as proposed by AT&T, in order to mitigate the possibility of a later dispute about whether rights Qwest has by implication under state law are covered by the section or not. AT&T's clause (iii) also represents an appropriate addition; if there are any rules (beyond those situations already addressed by the preceding two clauses) that give Qwest access rights that it can make available for CLECs, then there is no reason why Qwest should be excused from making such access available.

It is important to note in the case of each of these two proposed additional clauses that the SGAT should not be read as requiring Qwest to convey any thing that it does not have (or anything that it may have but be unable to make available) under state law. AT&T has not provided any authority to support a conclusion that the underlying rights at issue are other than as defined by state law. Nor has it provided an example of a case where Qwest's occupancy or occupancy rights rest upon some foundation other than what is provided by the law of the individual states in which Qwest operates.

SGAT Section 10.8.1.5 would thus read as follows:

*The phrase "ownership or control to do so" means the legal right, as a matter of state law, to (i) convey an interest in real or personal property or (ii) afford access to third parties as may be provided by the landowner to Qwest through express or implied agreements, or through Applicable Rules*

Should the SGAT be changed to so read, it will encompass a scope that is consistent with FCC requirements and that places CLECs in a reasonably comparable position to that of Qwest, in terms of access to rights of way.

### *3. Access to Landowner Agreements*

AT&T asserted that CLECs must sometimes have access to the agreements that Qwest has with private landowners and building owners, in order to determine the scope of Qwest's ownership and control.

The parties disagreed about whether landowners must give consent before Qwest may disclose to CLECs the agreements that give Qwest permission to occupy their property. Qwest said that it has agreed to provide CLECs with copies of *all* of its right-of-way *and* MDU agreements, in order to allow them to verify the extent to which Qwest has ownership and control rights and can provide third-party access.<sup>34</sup> The dispute relating to such access concerns those agreements that are not already publicly recorded. The SGAT requires that unrecorded agreements not be

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<sup>34</sup> *Qwest's Brief at 5.*

disclosed, unless the property owner consents. AT&T would agree to the need for such consent only where Qwest and the landowner have explicitly protected the privacy of the agreement.

AT&T had described Qwest's proposal as requiring a CLEC who seeks access to an unrecorded access agreement to first secure from the landowner an executed, notarized "Consent" from the subject property owner for both: (a) disclosure of Qwest's access agreement to the CLEC, and (b) CLEC access to the property. However, it appears that Qwest has changed the SGAT to limit the requirement to consent in the first case, not the latter. Qwest no longer requires a CLEC to obtain the consent of the property owner to an Access Agreement before Qwest will provide the CLEC a copy of underlying right-of-way agreement. Qwest only requires consent of the landowner to allow CLEC access to the agreement with the landowner.<sup>35</sup> In Colorado workshops and in negotiations with AT&T there, Qwest eliminated the requirement that the landowner consent to the Access Agreement itself.

Qwest argued that landowners have a legitimate expectation that these two-party dealings would remain private, because landowners entered into these agreements without any expectation that they would be available to other carriers to use in negotiations (presumably with CLECs for similar or related access rights) against them.<sup>36</sup> Qwest considered it unrealistic to presume that property owners generally would agree that such agreements that they have reached with Qwest would be available to potential negotiating adversaries, merely because the agreeing parties did not include a confidentiality provision. Qwest framed its argument as a concern that the Six State Commissions not jeopardize the rights of third parties who have not been able to represent their interests in these workshops.

AT&T argued<sup>37</sup> that requiring consent is neither necessary nor appropriate in the absence of an explicit consent requirement. AT&T believes that Qwest has unduly burdened CLECs by, in effect, creating a presumption that all Qwest access agreements with property owners are confidential and subject to a prohibition against disclosure. AT&T based its opposition to a blanket consent requirement upon FCC requirements that oblige RBOCs to make all "relevant data" related to ROW inquiries available for inspection and copying, subject to reasonable conditions to protect proprietary information.<sup>38</sup>

AT&T argued that nondisclosure of information about existing agreements would constitute a violation of the Act, particularly Sections 224(f)(1) and 271(c)(2)(B)(iii). It asked for SGAT language clarifying that Qwest would make these contracts available upon request (if necessary, under an agreement to maintain any required confidentiality). AT&T said that Qwest's landowner-consent provisions are unduly burdensome and unnecessary. AT&T also labeled them as discriminatory, noting that Qwest does not apply them to itself.

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<sup>35</sup> See Exhibit QWE-TRF-6, § 2.1. The CLEC must provide Qwest with an executed copy of either the Consent to Disclosure or the Consent Regarding Access Agreement forms that are included in Attachment 4 to Exhibit D.

<sup>36</sup> Qwest's Brief at 5.

<sup>37</sup> AT&T's Brief at 15-27.

<sup>38</sup> Local Competition Order, ¶ 1223. The FCC made this determination in the context of considering a denial of access to rights-of-way, and it concluded that efficiently resolving such disputes demanded that all necessary information be made available up front.

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This dispute focused primarily on already existing access rights, most of which arise from agreements that Qwest entered without the expectation that there would be a later obligation to make them available to CLECs. AT&T, however, also expressed a concern about future agreements that Qwest may enter with property owners. Specifically, AT&T questioned why Qwest would be motivated in the future to secure the ability to disclose the ROW agreement to third parties without prior written consent. In fact, AT&T raised the possibility that Qwest might have reason to incorporate explicit restrictions on disclosure, now that competition has made it an issue. AT&T believes that Qwest should in the future inform prospective landowners of its obligation to disclose such agreements to CLECs.

To counter the claim that Qwest could use agreement secrecy to enter anti-competitive access agreements, Qwest agreed, in SGAT Section 10.8.2.26, to certify to a landowner that an agreement with Qwest does not preclude the landowner from providing access to a CLEC:

- 10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:*
- 10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into a separate ROW agreement with CLEC; and*
- 10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.*

**Proposed Issue Resolution:** Qwest has substantially relied not on its own interests or those of its customers, but on the interests of landowners that it claims were not present to protect their presumed privacy interests at the workshop. It is not clear why it should be presumed that those landowners are predominantly of one mind as to the “privacy” of agreements with utilities for access. The argument that they might consider themselves disadvantaged by having others know the terms on which they have dealt with others has some conceptual appeal, but there is no basis for concluding that any harm will necessarily or even commonly result from that knowledge. It might also be presumed that a large portion of the landowners involved are supportive of the general benefits of competition (as their federal legislature certainly was in adopting the Act) or of the benefits that they might individually secure in pursuing competitive alternatives.

There is on this record no evidentiary basis for concluding that interests in privacy outweigh the benefits of streamlining the acquisition of rights of way, even in the collective mind of the public, in the capacity of landowners. Certainly, Qwest has not presented any evidence that is grounded upon formally surveying or even informally querying landowners. Therefore, this issue should not turn on what we might surmise to be the feelings of landowners as a group.

AT&T’s argument contains a similarly troubling aspect. One of its arguments for securing the underlying agreements with landowners is to allow it to bargain for its own access with knowledge of the terms that a landowner has already agreed to with Qwest. This argument misses the point of why access to these agreements is material under the Act. Access is material as it relates to access to Qwest facilities, and its particular relevance is on the issue of allowing a

CLEC to make its own determination of the sufficiency of Qwest rights to support the CLEC's occupancy.

It is evident why a CLEC should be allowed an independent determination of those rights, and why it should have access to these agreements. If a CLEC must rely upon Qwest's rights, their sufficiency can bear directly upon whether investments in facilities and commitments to potential customers should be made. It is not evident how this aspect of the Act can give comfort to a CLEC wishing to make its own arrangements that are independent of, or at least materially distinct from, Qwest's rights. The CLEC information needs that Qwest must meet are not related to providing commercial information that CLECs can use to make their own more economical or efficient arrangements with those who supply needed goods, services, or the like. The pertinent issues are not economic ones, but concern issues such as, for example, questioning a Qwest claim that no rights exist or that existing rights are not sufficient to accommodate CLEC access. We should be careful not to construe the Act as allowing a form of discovery whose purpose is to give CLECs superior bargaining position vis-à-vis landowners.

Even if we cannot conclude that a blanket presumption of privacy is warranted, we must still recognize that some property owners will likely object on the grounds of privacy to Qwest's disclosure of agreements without prior landowner consent. A material factor to consider is that Qwest takes legal risk, even if it may be small, in providing to CLECs agreements that some landowners will consider private. If a CLEC wants access to an agreement without asking a landowner first for consent (or even after a landowner has been asked for, but has denied it) it, not Qwest, should take the risk of landowner claims. It is, after all, the CLEC's need or desire for information that causes the risk to arise.

The SGAT should continue to incorporate a consent mechanism for those CLECs who do not want to take the risk of legal action by a landowner who might claim a loss of protected privacy. However, the SGAT should also allow a CLEC who is willing to take the risk (presumably in the interest of getting service to its customers more quickly) to obviate the necessity for securing consent. Specifically a CLEC that agrees to indemnify Qwest in the event of any subsequent legal action arising out of Qwest's provision of the agreement to that CLEC should be entitled to the agreements without having to comply with the landowner-consent provision.

The addition to the SGAT of a new Section 10.8.4.1.3.1, as follows, would accomplish this purpose:

*Alternatively, in order to secure any agreement that has not been publicly recorded, a CLEC may provide a legally binding and satisfactory agreement to indemnify Qwest in the event of any legal action arising out of Qwest's provision of such agreement. In that event, the CLEC shall not be required to execute either the Consent to Disclosure form or the Consent Regarding Access Agreement form.*

There remains the issue of motivating Qwest to consider CLEC disclosure in future agreements. AT&T's proposal is overly broad. It would appear to restrict Qwest from entering into (or perhaps enforcing) agreements that require nondisclosure, even in cases where such a provision arises entirely at a landowner's insistence. This approach is insensitive to the Qwest obligation to



serve. Meeting that obligation can be frustrated or made much more inefficient if Qwest is to be effectively precluded from dealing with landowners who will not bargain, except under assurances of nondisclosure. Moreover, such a remedy does not appear to be necessary. If Qwest engages in a pattern of conduct that is deliberately designed to frustrate CLEC access to agreements, then it will expose itself to regulatory, not to mention other requirements that are intended to penalize anti-competitive conduct. Moreover, to the extent that the SGAT contains general procedures for addressing conduct alleged to violate Qwest's obligations (but not specifically addressed elsewhere in the document) it will be appropriate to consider in the upcoming General Terms and Conditions workshop whether the potential future conduct at issue here can be addressed under those procedures.

#### 4. *Scope of CLEC Access (MDUs)*

AT&T asserted that Qwest must explicitly be obligated to provide access to all poles, ducts, conduits and rights-of-way, whether on public property, private property or owned property, that is owned or controlled by Qwest.<sup>39</sup> AT&T was concerned that Qwest did not explicitly make reference to Multiple Dwelling Units ("MDUs") and other multiple tenant situations. AT&T said that the FCC has tentatively concluded that the obligations under Section 224 encompass in-building conduit (e.g., risers) that Qwest may own or control.<sup>40</sup>

AT&T raised concerns regarding Qwest's provisioning of access to MDUs, particularly regarding the use of exclusive arrangements with MDU and campus business owners/operators that may tend to exclude CLECs from gaining access to MDU and campus-business rights of way. AT&T was concerned that this exclusion would prevent CLECs from providing service to residential and business customers located within the complexes.

Qwest, according to AT&T, previously contended that the access it obtains in MDUs does not constitute "right of way" to which CLEC access is required. Qwest has agreed to offer CLECs whatever access rights Qwest may have, but AT&T had contended that the scope of this promise is too vague to assure that CLECs will get what they are entitled to have.

WCOM took a position similar to that of AT&T.<sup>41</sup>

Qwest has argued that AT&T's concern is no longer apt. Qwest believes that its SGAT includes a commitment to provide access to any conduit, duct, and right-of-way over which it has ownership or control, even in MDUs. Qwest has made SGAT Section 10.8.1.3 revisions that it believes will fully address this issue. The rebuttal testimony of Qwest witness Freeburg sets forth the revised language, underlining the portions relevant to this issue:

*10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, Qwest will provide to CLEC, via an Access Agreement in the form of Attachment 4 to Exhibit D, access to available ROW for the purpose of placing*

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<sup>39</sup> AT&T's Brief at 8-11.

<sup>40</sup> *Promotion of Competitive Networks in Local Telecommunications Market*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-217, FCC 99-141, ¶44 (rel. July 7, 1999).

<sup>41</sup> WCOM at 11-12.

telecommunications facilities. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings.

Qwest also changed the definition of conduit to address a recent FCC order on access to commercial multi-tenant buildings,<sup>42</sup>

10.8.1.2.1 The terms Duct and Conduit mean a single enclosed raceway for conductors, cable and/or wire. Duct and conduit may be in the ground, may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct and conduit may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser. The terms Duct and Conduit include riser conduit.<sup>43</sup>

Qwest also proposed to modify the definition of "Right of Way":

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings. Within a multi-unit building, a ROW includes a pathway that is actually used or has been specifically designated for use by Qwest as part of its transmission and distribution network where the boundaries of the pathway are clearly defined either by written specifications or unambiguous physical demarcation.

**Proposed Issue Resolution:** In its brief, AT&T's focus was more on the right of way agreement disclosure issue than on the sufficiency of the SGAT's provisions to include MDUs. Qwest's SGAT changes reflect the inclusion of the MDU environment in its access obligations. AT&T

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<sup>42</sup> First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, FCC 00-366 (rel. Oct. 25, 2000) ("MTE Order").

<sup>43</sup> Qwest has combined the terms Duct and Conduit into the same definitional section. In addition, Qwest has inserted the term "Duct" in various provisions of Section 10.8 that referred to "Poles/Innerduct" to clarify that "duct" is included in those provisions.

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has not identified any other specific changes that it considers to be necessary to assure that Qwest does not improperly address access questions in the MDU context. Therefore, it appears that Qwest has adequately addressed the need to assure that CLECs will obtain sufficient access in the MDU environment.

### 5. *Curing CLEC Breaches*

When a CLEC using access it has gained from Qwest breaches the terms of that access, Qwest wants CLECs to secure from the landowners involved the express right to be able to cure that breach, for the expressed purpose of protecting its underlying access rights and those of all carriers using those rights.

Without a cure opportunity, Qwest argued, a CLEC breach of the Qwest right-of-way agreement that the CLEC uses to obtain access could cause Qwest to forfeit its right-of-way.<sup>44</sup> The injury according to Qwest would not easily be curable by awarding damages: Qwest would have to purchase a new right-of-way and move its facilities. Qwest noted that the damage to non-breaching CLECs using that same right of way would be similar. Therefore, Qwest argued that an opportunity for Qwest to cure breaches would protect all carriers, not only Qwest.

Qwest stated that the CLEC burden to negotiate with landowners for cure rights is minimal in comparison to the risks involved. Qwest also said that it would not be proper to place upon Qwest the burden to negotiate cure rights. When CLECs must also negotiate with the landowner, for their access, this additional requirement should cause no delay according to Qwest. Qwest has drafted a notice provision for CLECs, which is included as one of the attachments to proposed Exhibit D of the SGAT, along with the Access Agreement.

Qwest has written SGAT Exhibit D, ¶ 2.2, and Exhibit D, Attachment 4 to require CLECs to obtain the agreement of an owner (who has an access agreement with Qwest) to provide Qwest with notice and opportunity to cure any default that CLEC use of the agreement might cause for Qwest. AT&T objected to this provision<sup>45</sup> and WCOM took a similar position.<sup>46</sup> AT&T argues that neither the Act nor the FCC impose any requirement for a CLEC to secure such a concession from a landowner in order to gain access under the agreement pursuant to which the landowner has granted rights of access to Qwest.<sup>47</sup> AT&T cites the FCC's emphasis on expediting access to rights of way:

*Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."*<sup>48</sup>

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<sup>44</sup> Qwest's Brief at 7.

<sup>45</sup> AT&T's Brief at 20-23.

<sup>46</sup> WCOM at 20-25.

<sup>47</sup> 47 U.S.C. § 251(b)(4); Local Competition Order, ¶¶ 1119 – 1158.

<sup>48</sup> Bell South Second Louisiana Order, ¶ 176 (citing Local Competition Order, 11 FCC Rcd at 16067).

AT&T said that Qwest generally includes free assignability clauses in its agreements with landowners. Should they not provide sufficient protection, the responsibility lies with Qwest, which could have negotiated for the inclusion of appropriate cure clauses in its existing agreements. AT&T also stated that the SGAT already contains indemnification and liability provisions intended to protect Qwest should CLEC access expose Qwest to liability.<sup>49</sup> Qwest should not, according to AT&T, be allowed to disclaim the value of these provisions because of uncertainty over the financial ability of any particular CLEC. Financial ability is implicit in the provision of any services under the SGAT and Qwest already has an SGAT right to seek a demonstration of financial ability before serving CLECs.

AT&T raised other concerns with the Qwest language. AT&T argued that the standard form Qwest proposes for this purpose would make it unlikely that a CLEC would readily gain landowner acceptance, thus producing an extended period to secure landowner approval. AT&T also believes that Qwest's proposals are discriminatory, because a CLEC must comply with arrangements that are more burdensome to CLECs than they are to Qwest, because: (a) CLECs incur greater liabilities, and (b) Qwest does not require an agreement to provide notice and opportunity to cure where transfer of an interest from Qwest is made. CLECs are exposed to forfeiture if Qwest breaches an agreement, yet Qwest does not require that landowners give CLECs a right to cure Qwest breaches.

Qwest disagrees that the SGAT's risk management provisions already give it adequate protection. Qwest says that those provisions provide only for damages (§ 5.9.1.1); they cannot protect against the extinguishments of rights of way due to CLEC defaults. Qwest also says that it should not have to trust to the financial resources of "unstable" CLECs. Qwest says that the Section 224 requirement to provide access to rights-of-way should not be read as requiring it to jeopardize the existence of that the right-of-way.

**Proposed Issue Resolution:** There is risk to Qwest and to other carriers using Qwest rights of way, in the event that a CLEC does not use the underlying Qwest rights of way in accordance with agreements. However, that risk, as AT&T notes is contingent, and is substantially mitigated by the SGAT's other indemnity and liability provisions. In contrast, the impact of imposing Qwest's blanket provision on CLEC operations is not contingent, and it will be regularly recurring. The need to negotiate a cure provision with all landowners will present a constant and sometimes insurmountable barrier. Landowners will find negotiating such provisions at best to be a nuisance. Qwest's requirement will make CLEC use of Qwest right of way slower and less efficient, not to mention unavailable at all when a landowner says no to ceding cure rights. Moreover, Qwest's requirement is under-inclusive. A breach by Qwest exposes occupying CLECs to similar risks; yet Qwest does not offer a similar protection to them.

A balancing of the interests involved favors the elimination of the requirement for CLECs to secure cure provisions from landowners. That requirement will encumber the ability of CLECs to gain access, particularly since Qwest will have substantial protection against the consequences that concern it. There may be questions about the financial viability of some CLECs. However, this question affects many aspects of their relationship with Qwest. They are best addressed

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<sup>49</sup> See, e.g. *SGAT* §§ 5.1, 5.9, 5.13

generally, rather than in this specific checklist item context. To the extent that Qwest considers the SGAT's general provisions on CLEC financial security to be inadequate in this context, it may raise the issue in the General Terms and Conditions workshop that will follow this one. Therefore, the SGAT's cure provisions should be removed.

## 6. *Large-Request Response Times*

AT&T observes that SGAT Section 10.8.4 and Section 2.2 of Exhibit D permit Qwest, in the case of large orders for access, to provide an initial response approving or denying a portion of the order within 35 days after order receipt, thereafter continuing to approve or deny on a rolling basis and without time limits until it has completed responding to the order. AT&T believes that Qwest is required to respond to all requests, regardless of size, within 45 days under Section 47 CFR 1.1403(b).<sup>50</sup> The rule allows no extension beyond 45 days for large requests and the FCC has confirmed the firm 45-day obligation in the recent *Cavalier* decision, according to AT&T.<sup>51</sup>

Qwest believes that the *Cavalier* decision<sup>52</sup> endorsed a rolling approval process for large requests for access.<sup>53</sup> The FCC held that pole owners must “act on each permit application” within 45 days of receipt. In the case of an application involving a “large” number of poles, the FCC also said that the owner must “approve access as the poles are approved, so that [the requesting carrier] is not required to wait until all the poles included in a particular permit are approved prior to being granted any access at all.”<sup>54</sup> Qwest interprets the 45-day requirement as requiring response to as many of the poles covered by the application as can be completed within 45 days, but not necessarily all of them. After the 45 days, Qwest must then grant access as poles are approved, so that CLECs need not wait for access to any until access to all has been decided.<sup>55</sup> Qwest Exhibit QWE-TRF-6 proposed language for Section 2.2 of Exhibit D that paraphrases the language of the *Cavalier* decision.<sup>56</sup>

Qwest argues that any other reading of the *Cavalier* decision would be counterintuitive, because it would suggest that Qwest must make access decisions on large requests in a shorter duration than applies to small requests. For example, Qwest could wait the entire 45 days to decide on access to a 2-pole request, but presumably would be expected to allow access in less than 45 days to two or more poles that formed part of a 100-pole request. Qwest's witness Freeberg indicated that, in the case of very large requests for access to poles and duct, 45 days will be

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<sup>50</sup> AT&T's Brief at 29-30.

<sup>51</sup> See, *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*; 15 FCC Rcd. 9563, June 7, 2000.

<sup>52</sup> Id. ¶15.

<sup>53</sup> Qwest Brief at 12

<sup>54</sup> *Cavalier*, (footnotes omitted; emphasis added).

<sup>55</sup> Id. (emphasis added).

<sup>56</sup> This language appears in Section 2.2 of Exhibit QWE-TRF-6.

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sometimes an impossibility, and will produce unpredictable service fulfillment expectations for CLECs. Witness Freeberg cited paved-over manholes as an example.<sup>57</sup>

AT&T says that Qwest's interpretation of the decision is incorrect; the FCC did not permit a response to large orders outside the 45-day period.<sup>58</sup> Rather, the *Cavalier* decision merely directed the utility to begin approving access as poles are approved, so as to provide the Complainant with access as soon as possible. Nowhere did it create an exception to the 45-day rule. XO Utah's brief also argues that the FCC has authorized no exception to this time limit for large orders.<sup>59</sup>

Qwest believes that the revised schedule in Section 2.2 complies with the FCC's guidance on responding to large requests, but is willing to make further changes, which it has taken from SBC's Master Agreement in Texas,<sup>60</sup> in Section 2.2 of Exhibit D. Under the Texas Master Agreement, Southwestern Bell committed to complete all orders within 45 days, provided that a single attachment order would be limited to no more than 300 poles or more than 20 manholes. The FCC's approval of Southwestern Bell's Section 271 application implicitly endorsed this approach as consistent with the Act and the requirements of Section 271(c)(2)(B)(iii).<sup>61</sup> Qwest would agree to the following language to respond to requests for access to rights-of-way over which Qwest has ownership or control:

*No more than three (3) miles shall be the subject of any single ROW Order not relating to multi-unit buildings. This provision assumes a maximum of seventeen (17) properties per mile or fifty-one (51) owners in three (3) miles.*

*No more than one campus shall be the subject of any single Order for access to ROW within multi-unit buildings. This provision assumes a maximum of fifteen (15) buildings.*

**Proposed Issue Resolution:** The *Cavalier* decision cannot be logically read as requiring access to all poles in a large order to be determined within 45 days. Otherwise, it stands for the odd proposition that if a CLEC orders 3 poles, it may have to wait 45 days for responses on all of them; however, it can get decisions on a number greater than 3 if it submits a large order. Nevertheless, Qwest's proposal does not satisfactorily address the issue; it invites a CLEC to

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<sup>57</sup> *Freeberg Rebuttal* at 12.

<sup>58</sup> *AT&T Brief* at 29-31.

<sup>59</sup> *Brief of XO Utah on Initial Checklist Items* at 3.

<sup>60</sup> *T2A, Master Agreement For Access To Poles, Ducts, Conduits, And Rights-Of-Way (Texas)*, § 9.03(c) ("No more than 300 poles shall be the subject of any single pole attachment license application") and § 9.03(d) ("No more than 20 manholes shall be the subject of any single conduit occupancy license application.").

<sup>61</sup> *The SBC Texas Order notes that Southwestern Bell relies upon the Texas Master Agreement to demonstrate Southwestern Bell's compliance with checklist item 3. See Memorandum Opinion and Order, Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, FCC 00-238 ¶245 n. 694 (June 30, 2000) ("SBC Texas Order").*

submit a 150-pole order in two parts, which by making each order one of less than 100 poles, makes the 45-day limit applicable to all the poles involved. In addition, Qwest's proposal would have it responsible for responding to all of an order that is for up to 99 poles, while obliging it to respond to no certain portion of an order for 101 poles. The granting of rolling access appears to raise other problems as well. For example, a CLEC might get early approval of a portion of a several mile, integrated facility run only to find itself later to be denied access to the remainder. The trouble that both the FCC and Qwest find themselves in is clearly a function of trying to establish an overly simplistic arithmetic approach to an order-processing challenge that is too complex to be addressed that way. It would be good to find a way that addresses the issue simply, yet objectively, but no approach imaginable would be free from the concurrent problems of under and over inclusivity.

Absent carefully constructed alternatives by the participants, it is therefore more practical to treat cases where Qwest has large access-request workloads as possible exceptions to the base interval requirements. Overall workload may not be a function of the size of a particular order; *e.g.*, a significant number of medium sized orders from multiple CLECs and in the same vicinity may be much more difficult to handle than a single large order from one CLEC.

Accordingly, the SGAT should provide that Qwest is obligated to meet the baseline intervals (*i.e.*, no specifically defined exceptions to the 45-day rule) unless Qwest can secure relief (under whatever measures the SGAT or state commission regulations may provide). Admittedly, this approach may take some time to develop in a satisfactory manner, because it will take real cases, perhaps examined partially after the fact, to establish clear courses of dealing. However, it will have the advantage of actual circumstances, needs, and limitations to inform it. Again, if Qwest believes that the SGAT's general sections have not been drawn to support a request for relief of this type, Qwest can address it in the General Terms and Conditions workshop to follow.

Specifically, in Section 2.2 of Exhibit D of the SGAT, Qwest should strike from the third paragraph everything after the first sentence. In place of the stricken language, Qwest should insert the following:

*In the event that Qwest believes that circumstances require a longer duration to undertake the activities reasonably required to deny or approve a request, it may petition for relief before the Commission or under the escalation and dispute resolution procedures generally applicable under this SGAT.*

Finally, it should be understood that this resolution does not necessarily narrow nor expand the exception that Qwest has sought. There are likely to be cases where individual orders smaller than those targeted by Qwest will justify an exception, just as there may be cases where larger orders do not qualify.

## *7. Relationship to Other Checklist Items*

AT&T says that there was agreement in other states that the MDU access issue be addressed in the workshop on subloops. MDU and subloop issues are integrally related; CLECs should not be foreclosed from addressing MDU access issues in the subloop workshop. Qwest has also stated

an intention to offer a new product called “field collocation.” There is no current SGAT language or testimony describing field collocation, but it appears that it will raise right of way issues. Therefore, right of way issues may arise in Workshop 2, which will address Qwest’s field collocation offering. AT&T said that Checklist Item 3 should remain open until those concerns have been addressed in subsequent workshops. AT&T and WCOM further supported a delay in closing this checklist item by citing the FCC’s October 25, 2000 order on access to multi-tenant environments.<sup>62</sup>

Qwest has agreed to consideration in those workshops of any subloop and field collocation issues that may arise, but have not yet arisen. Qwest asserted that AT&T agreed with this approach in Colorado workshops; that agreement obviates any need to defer closure of Checklist Item 3.

**Proposed Issue Resolution:** It is not certain at present that these potential right of way issues will arise. Moreover, if they do, all parties, including Qwest, agree that they can be addressed in subsequent workshops. There is thus no need to address this issue here or to defer consideration of Qwest’s compliance with Checklist Item 3.

#### 8. *Payment for Facility Re-arrangement Costs*

McLeodUSA also objected to requiring CLECs to pay under SGAT Section 10.8.2.11 to re-arrange their facilities if the need for modification is solely a Qwest one.<sup>63</sup> Qwest noted that it gives CLECs 60-day notice of such re-arrangements, which is what the FCC requires.<sup>64</sup> CLECs are only required to pay to rearrange their facilities if they fail to respond timely. Qwest considers this provision to provide a proper incentive for CLECs to respond promptly to Qwest re-arrangement needs.

**Proposed Issue Resolution:** This provision provides a reasonable means to assure that CLECs do not unreasonably delay Qwest facility modifications that are necessary for it to provide service. No change to the SGAT is necessary or appropriate.

#### 9. *Inspection Costs*

McLeodUSA questioned the difference between on-site and final inspections under SGAT Section 10.8.1.12.<sup>65</sup> McLeodUSA also said that Qwest should bear the expense of on-site and

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<sup>62</sup> *First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, FCC 00-366 (rel. Oct. 25, 2000) (“MTE Order”).*

<sup>63</sup> *McLeodUSA’s Comments at 2.*

<sup>64</sup> *Local Competition Order ¶ 1209; Order on Reconsideration, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-266 ¶ 100-102 (rel. Oct. 26, 1999) (“Order on Reconsideration”).*

<sup>65</sup> *McLeodUSA’s Comments at 2-3.*



final construction inspections under SGAT Section 10.8.2.12, because they benefit Qwest. McLeodUSA believes that the inspection burden should be the same as that of SGAT Section 10.8.2.14. Moreover, McLeodUSA would not shift the cost burden on the basis of whether violations are found, because that could produce an incentive to find violations. Qwest testified that the term "on-site/final" inspection in Section 10.8.2.12 contemplates a physical, visual review of CLEC's facilities after installation. Qwest also said that SGAT Section 10.8.2.14 requires Qwest to pay for any inspection of CLEC attachments, except where a material violation is found. Qwest considers the requirement that the violation be "material" to provide sufficient control over abuse of the inspection process to transfer cost responsibility to CLECs.

**Proposed Issue Resolution:** McLeodUSA filed no brief nor did it in any way follow up on the list of questions that comprised its filing in this workshop. Nevertheless, since that filing did take specific issue with Qwest's inspection-charge provision, the issue is considered to be in dispute. Qwest acknowledges that it will only charge if there are material violations. It is reasonable to presume that Qwest will re-inspect after material violations have been found. If a re-inspection finds no material violations, then it will cause no charge, as Qwest explained this SGAT provision. Thus, a CLEC that brings its access into compliance will in fact cause a final inspection for which there is no charge.

This SGAT provision fairly balances Qwest's need to assure that construction is compliant with CLEC concerns about "trumped up" violations. The argument that an inspection "benefits" Qwest misses the point, which is cost causation. Qwest does not perform these inspections because they confer on Qwest a benefit that is independent of a CLEC's occupancy of its premises or occupancy rights. The occupancy of the CLEC causes the need for the inspection, which is to ensure that CLEC installation complies with valid requirements. It is proper to charge CLECs for them as Qwest proposes. In effect, only where there are material problems, which by definition leave open for later inspection ultimate CLEC compliance, do CLECs pay separately at all for inspections.

#### *10. Time Limit for Remedying Non-Complying Attachments*

McLeodUSA said that the SGAT Section 10.8.2.13 term "reasonable period" should be specified, or should be as determined by mutual agreement.<sup>66</sup> Qwest opposes this change. Qwest said that the intent of the suggestion was to give CLECs a correction interval that matches the nature of the non-compliance. Qwest thinks that a case-by-case approach, which the current language supports, is necessary, because there are ranges of modification times and safety or reliability considerations at issue.

**Proposed Issue Resolution:** Again, McLeodUSA filed no brief nor did it make any follow-up to Qwest's response to its questions. In the event that the issue remains in dispute, Qwest's approach is preferable. McLeodUSA's approach presumes that a standard correction interval is definable. Qwest's approach strikes a proper balance, because the existence of safety and reliability concerns makes a "one-size-fits-all" interval that problematic. The use of the term

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<sup>66</sup> *Id.* at 2.

“reasonable” in the existing language affords the basis for relief to CLECs who may feel that Qwest is interpreting the section inappropriately.

### *11. Schedules and Fees for Inspections*

McLeodUSA recommends an SGAT Section 10.8.2.14 inspection schedule that is definite enough to allow CLECs to project the costs involved.<sup>67</sup> McLeodUSA also favors fixed fees, rather than an individual-case-basis (“ICB”) approach to charging for them. Qwest responded that the base obligation for Qwest to pay for the inspections (subject to finding material violations) is sufficient protection against too many inspections. Qwest considers it appropriate to establish inspection frequency for individual CLECs on the basis of past performance and on the basis of the safety or reliability concerns that may be present. Qwest also believes that the widely differing nature of the kinds of inspections involved requires an ICB pricing approach.

**Proposed Issue Resolution:** Again, McLeodUSA has not pursued this issue past inclusion of it in its list of questions. There is no basis for concluding that Qwest is in error in concluding that the inspection frequency should be a function of an individual CLEC’s performance record or in observing that the scope of possible inspections is too broad to support a single fixed price. Therefore, the existing SGAT language should be considered a satisfactory means for governing inspection schedules and fees.

### *12. Unauthorized Attachment Fee Waiver*

Qwest rebuttal witness Freeberg unilaterally proposed a change to SGAT Section 10.8.2.22.<sup>68</sup> The change would provide for waiver of half the unauthorized attachment fee (the original language waived it all) where a CLEC meets the cure obligations. Qwest made the change because the lack of financial consequences might induce unlawful attachments or occupancy. No party has commented on or challenged the provision.

**Proposed Issue Resolution:** The current language strikes an appropriate balance. First, it provides that no unauthorized attachment fee will be required in the case of Qwest error. Second, it establishes a financial incentive not to make such attachments. The prior provision would have allowed CLECs to obtain a no-harm cure, simply by placing the order that should have been made in the first instance. Such a provision would inevitably tend to undercut the obligation to make proper applications in advance. Third, by continuing to waive a substantial portion of the fee after a cure, the provision works to mitigate the effects of good-faith CLEC errors and to encourage resolution of instances where Qwest claims unauthorized attachments. The lack of objection to the proposal (although it appears to have drawn no affirmative comment by CLECs) further supports the conclusion that it is appropriate for inclusion in the SGAT.

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<sup>67</sup> *Id.* at 2-3.

<sup>68</sup> *Freeburg Rebuttal Testimony* at 24.

## Checklist Item 7(I): 911 and E911 Services

### Background

Section 271(c)(2)(B)(vii) of the Act requires Qwest to provide “nondiscriminatory access to – (I) 911 and E911 services.”<sup>69</sup> The FCC has defined this obligation as requiring “a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, or, at parity.”<sup>70</sup> AT&T and McLeodUSA have raised concerns or questions about Qwest’s compliance with this requirement.

Qwest witness Bumgarner, on rebuttal, provided a summary of services that Qwest was providing to CLECs as of August 31, 2000:

#### Qwest 911/E911 Services To Facilities-Bases CLECs

Facilities- Based		Resellers	
State	No.	State	No.
ID	3	ID	10
IA	7	IA	11
MT	2	MT	10
ND	0	ND	12
UT	3	UT	7
WY	0	WY	4

### Issues Resolved During this Workshop

The participants raised a number of issues about which they have been having ongoing dialogue, particularly in section 271 workshops in other Qwest states. Some of those issues have been resolved among the parties contesting them. The later filings in this workshop and the briefs of the parties explain those resolutions. Other participants, particularly McLeodUSA, have raised questions in their initial comments. Qwest generally responded to those questions by providing in its rebuttal filing answers explaining the rational for the SGAT provisions questioned (a number of the questions were manifestly intended only to seek explanation, not to raise specific concerns).

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<sup>69</sup> 47 U.S.C. § 271(c)(2)(B)(vii).

<sup>70</sup> *BellSouth Second Louisiana Order*, ¶ 235 (citing *Ameritech Michigan Order*, ¶ 256).

The parties' resolutions of the issues on which they have come into agreement are reasonable and appropriate; Qwest's answers to questions explaining the basis for SGAT sections questioned reasonably responded to the concerns that appear to have underlain other McLeodUSA's questions. Moreover, McLeodUSA made no further inquiry or comment, nor did it file a brief following Qwest's response to the questions raised. Therefore, it is appropriate for the commissions to consider these issues, which are briefly described below, to have been resolved in a manner that is consistent with the public interest and with the requirement that Qwest comply with checklist item 7(i).

*1. Documentation for direct connection interconnection arrangements*

AT&T raised concerns about being required to connect through an intermediate frame. However, AT&T has since stated that its direct connection concerns have been resolved by an agreement from Qwest to allow parties to connect directly to its COSMIC or main frame, which will eliminate the prior requirement that connection be through an intermediate frame, such as an ICDF or SPOT frame. Qwest has agreed to the revised processes that are described in Attachment A to AT&T's Wilson Affidavit.<sup>71</sup>

*2. Lack of SGAT specificity on what Qwest will do to assure parity*

AT&T recognized that the SGAT generally adopts a proper standard in providing that, "E911 functions provided to CLEC shall be at the same level of accuracy and reliability as for such support and services that Qwest provides to its end users for such similar functionality." However, AT&T claimed that the lack of further detail makes it impossible for Commissions or CLECs to assess whether parity will be provided. AT&T recommended no correction to address this concern. The Wilson affidavit, however, also stated that all of AT&T's concerns about the Qwest SGAT insofar as this checklist item is concerned have been resolved.<sup>72</sup> Therefore, this issue should be considered closed.

*3. McLeodUSA Questions*

McLeodUSA raised a number of questions about 911/E911, but did not express any discernible, specific objections or concerns.<sup>73</sup> A number of these inquiries appeared to solicit information, rather than to make objections or raise concerns. Inquiries of this type, to which Qwest has provided responses in its rebuttal filing, included:

- Distinguishing between 911 and E911 at various points in the SGAT
- Seeking information about database maintenance for 911 (Qwest replied that there is only a database for E911)
- Determining when a CLEC becomes "facilities-based" under SGAT Section 10.3.4.2 and whether there is a difference between a "CLEC" and a "facilities-based CLEC" in Section 10.3.4.1

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<sup>71</sup> Affidavit of Kenneth L. Wilson Regarding Access to 911, Signaling & Databases, Directory Listings, Numbering Administration and Dialing Parity (hereafter Wilson Affidavit)

<sup>72</sup> Wilson Affidavit at 6.

<sup>73</sup> McLeodUSA's Comments at 3-4.

- Asking whether Qwest provisions E911 through a tandem at all Qwest locations.

#### 4. *Responsibility for Database Errors*

McLeodUSA questioned whether Qwest would assume responsibility for database errors and whether Qwest would provide indemnity in connection with database errors.<sup>74</sup> Qwest witness Bumgarner stated that CLECs provide their own updates directly to the database administrator, which is not Qwest, but Qwest's contractor, who is SCC. Therefore, Qwest argues, it is not in a position to ensure the accuracy of updates or to take responsibility for errors in those updates. Qwest's answer was responsive and it provided a foundation for its claim that it should not bear responsibility for data base errors. Given the lack of further evidence or briefing of the issue from McLeodUSA, this issue should be considered to be resolved.

#### 5. *Definition of the Term "Nondiscriminatory"*

McLeodUSA questioned what the term "nondiscriminatory" means in the provisioning context, particularly where facility availability problems exist.<sup>75</sup> On rebuttal, Qwest witness Bumgarner stated that no party has alleged a shortage of 911/E911 trunking facilities in any of the participating states. Ms. Bumgarner also testified that ROC performance measures would identify any variances in providing trunking within the prescribed limits. Qwest's answer was responsive and it provided a foundation for its claim that there exists an objective standard for determining the question of discrimination as it concerns facility availability. Given the lack of further evidence or briefing of the issue from McLeodUSA, this issue should be considered to be resolved.

### **Issues Deferred to Other Workshops**

#### 1. *Impacts of Number Porting on 911/E911 Services*

This issue was addressed in detail in Workshop One. It concerns the timing problem that occurs if service from Qwest is disconnected before the telephone number of a customer migrating from Qwest to a CLEC is ported. That issue will be resolved in the report to be issued following the conclusion of that workshop and subsequent briefing there, which will include this issue. The issue will not be addressed in this report. Qwest witness Bumgarner did present testimony that addresses the procedures adopted by Qwest with the intent of minimizing out-of-service conditions regarding 911/E911. That testimony was not rebutted in this workshop. The Bumgarner testimony will be considered in that workshop.

### **Checklist Item 7(II): Directory Assistance**

#### **Background**

Sections 271(c)(2)(B)(vii)(II) and 271 (c)(2)(B)(vii)(III) of the Act require Qwest to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers

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<sup>74</sup> *Id.* at 3.

<sup>75</sup> *Id.* at 3.

to obtain telephone numbers” and “operator call completion services.”<sup>76</sup> Section 251(b)(3) requires each LEC to give all competing providers of exchange and toll service nondiscriminatory access to “operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”<sup>77</sup>

The FCC’s *Local Competition Second Report and Order*, provides that “nondiscriminatory access to directory assistance and directory listings” means that all customers of all carriers:

*should be able to access each LEC’s directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer’s local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.*

All customers “must be able to connect to a local operator by dialing ‘0,’ or ‘0 plus’ the desired telephone number.”

Qwest’s obligations extend to its national directory assistance service. Earlier this year, the FCC ruled that the nationwide component of Qwest’s nonlocal directory assistance service violated the Act.<sup>78</sup> The FCC concluded that the region-wide component of Qwest’s nonlocal directory assistance service falls within the scope of the exception provided in section 271(g)(4),<sup>79</sup> and required Qwest to “make available to unaffiliated entities all of the in-region directory listing information it uses to provide region-wide directory assistance service at the same rates, terms, and conditions it imputes to itself.”<sup>80</sup>

### **Issues Resolved During this Workshop**

The participants raised a number of issues about which they have been having ongoing dialogue, particularly in section 271 workshops in other Qwest states. Some of those issues have been resolved among the parties contesting them. The later filings in this workshop and the briefs of the parties explain those resolutions. Other participants, particularly McLeodUSA, have raised questions in their initial comments. Qwest generally responded to those questions by providing in its rebuttal filing answers explaining the rationale for the SGAT provisions questioned (a number of the questions were manifestly intended only to seek explanation, not to raise specific concerns).

The parties’ resolutions of the issues on which they have come into agreement are reasonable and appropriate; Qwest’s answers to questions explaining the basis for SGAT sections questioned reasonably responded to the concerns that appear to have underlain other McLeodUSA’s questions. Moreover, McLeodUSA made no further inquiry or comment, nor did

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<sup>76</sup> 47 U.S.C. §§ 271(c)(2)(B)(vii)(II) & (III).

<sup>77</sup> 47 U.S.C. § 251(b)(3). *See also Bell Atlantic New York Order*, ¶ 351.

<sup>78</sup> *Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding The Provision of National Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance*, Memorandum Opinion and Order, CC Docket No. 97-172, FCC 99-133, ¶ 2 (rel. Sept. 27, 1999).

<sup>79</sup> *Id.*, ¶ 23.

<sup>80</sup> *Id.*, ¶ 37.

it file a brief following Qwest's response to the questions raised. Therefore, it is appropriate for the commissions to consider these issues, which are briefly described below, to have been resolved in a manner that is consistent with the public interest and with the requirement that Qwest comply with checklist item 7(I).

1. *Access to Qwest's Directory Assistance List*

AT&T expressed a concern that Qwest's SGAT did not provide nondiscriminatory access to its list of all the in-region telephone numbers Qwest uses to provide directory assistance.<sup>81</sup> Qwest agreed to revise Section 10.6.1.1 of its SGAT in a manner that fully addresses this concern.

2. *Contacting Customers in Emergencies*

AT&T was concerned that it would not have the same ability as Qwest has to contact customers with non-published telephone numbers in emergencies. AT&T wanted the same access that Qwest directory assistance personnel have to these numbers for this purpose.<sup>82</sup> Qwest amended Section 10.6.2.10 of the SGAT in a manner that addresses this concern.

3. *Limiting CLEC Use of Listing Information to Local Exchange Customers*

AT&T said that the SGAT prohibited CLECs from using the Directory Assistance List on directory-assistance calls from customers who are not local exchange end users. As Qwest appears not to so limit its own use, AT&T considered this limitation on CLECs to be discriminatory and difficult to enforce (as CLECs could not identify the caller with sufficient particularity).<sup>83</sup> Qwest modified SGAT Section 10.6.2.1 in a manner that addresses this concern.

4. *Restrictions on Use of Proprietary Information*

AT&T considered SGAT Section 10.6.2.5 restrictions on use of proprietary information to be overly broad, because the restrictions do not explicitly allow CLECs to use such information that they obtain from a source other than Qwest. AT&T has been satisfied with prior Qwest affirmations that Section 5.16.4 would allow such use; therefore, this issue was not argued.<sup>84</sup>

5. *Definition of the Term "Nondiscriminatory"*

McLeodUSA questioned what the term "nondiscriminatory" means in the SGAT Section 10.5 context of access to directory assistance.<sup>85</sup> Qwest responded by saying that the term generally has the same meaning as the FCC intends in its orders addressing directory assistance. This interpretation, which McLeodUSA did not later contest by evidence or brief, is reasonable.

6. *Audit Duplication*

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<sup>81</sup> *Wilson Affidavit at 9.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id. at 10.*

<sup>85</sup> *McLeodUSA's Comments at 3.*

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McLeodUSA observed that Section 18.2.4 of the SGAT already provides for two audits, suggesting that Section 10.6.2.8.1 may be duplicative. It also questioned why Qwest is the only party that can "seed" information to trace compliance.<sup>86</sup> Qwest responded that the Section 10 audits had distinct purposes from those of Section 18, which, unlike Section 10 is reciprocal. Qwest also proposed new SGAT audit language to address the "seeding" issue:

*10.5.2.10.1 In accordance with Section 18, CLEC may request a comprehensive audit of Qwest's use of CLEC's directory assistance listings. In addition to the terms specified in Section 18, the following also apply: as used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the directory assistance listings provided hereunder and such other Party's performance of its obligations under this Agreement. CLEC may perform up to two (2) audits per 12-month period commencing with the effective date of this Agreement of Qwest's use of CLEC's directory assistance listings in Qwest's directory assistance service. CLEC shall be entitled to "seed" or specially code some or all of the directory assistance listings that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in this Agreement.*

Qwest satisfactorily distinguished the nature of the Section 18.2.4 and the Section 10.6.2.8 audits and it made an SGAT change that addresses the seeding issue.

## **Issues Remaining in Dispute**

### *1. Access to Qwest's CNAM Database*

WCOM raised only this one directory-assistance issue, although Qwest considers it a call-related database issue.<sup>87</sup> WCOM believes that the Act requires access to CNAM database as a network element under 47 U.S.C. § 251(c)(3); *id.* § 153(29), which defines network elements to include "databases." WCOM also cites the *Local Competition Order*, §§ 484 and 485 and the *UNE Remand Order*, FCC 99-238, § 406. WCOM specifically objects, on the basis of discriminatory treatment, to Qwest's proposal to limit access to individual queries, rather than to provide a bulk transfer of the entire database. WCOM said that it would only be able use the CNAM database effectively if it can, like Qwest, populate and maintain its own databases. WCOM said that bulk transfer would allow it to structure its databases to suit its customer needs and offer innovations. Qwest responded by saying that the FCC decided in the *Local Competition Order* not to require direct access to call-related databases. Qwest cites language holding that:

*We . . . emphasize that access to call-related databases must be provided through interconnection at the STP (signaling transfer point) and that we do not require direct access to call-related databases.*

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<sup>86</sup> *Id.* at 4.

<sup>87</sup> WCOM at 28-31.



Similarly, Qwest said the FCC's *UNE Remand Order* limited access 'for the purpose of switch query and database response through the SS7 network.'<sup>88</sup> Further, the FCC required incumbent LECs to provide access "by means of physical access at the signaling transfer point linked to the unbundled databases."<sup>89</sup> Qwest does not object to access on a query-response basis. However, Qwest said that the kind of access that the FCC requires is less than the bulk transfer of the entire database.

WCOM did not agree that the FCC would limit access to a "per query" basis. WCOM says that the FCC decided only that complete and global access to a LEC's CNAM database was not "technically feasible" over a signaling network.<sup>90</sup> Thus, the FCC direction to provide access to databases at the signaling transfer point should not be read as limiting access only to that which can be provided through the signaling network. Therefore, WCOM continued, because it has been shown that what WCOM seeks is technically feasible, Qwest should provide access to the entire database in order to avoid discrimination against CLECs. In support of its discrimination argument, WCOM offered Caller ID as an example where per query access would reduce efficiency, inhibit service-quality management, and limit the addition of new features. Specifically, WCOM claimed that it must be given "bulk access" to the CNAM database, because it cannot obtain access to the database on a "query-response" basis in the short amount of time during the first silent interval in the ringing cycle.

Qwest responded by saying this "first-silent-interval" claim should have been raised in the FCC's *UNE Remand* proceeding, which addressed CLEC access to CNAM database. Also, Qwest said that it has no advantage, but must undertake the same Caller ID activities that WCOM must. Finally, even if Qwest were to provide bulk transfer, it believes that WCOM would still have to update the database and make queries of other database providers. Qwest also said that it already is meeting the industry standard, which only requires response to a query before the second, not the first, ring. Finally, Qwest recited the FCC *UNE Remand Order* holding that "the costs incurred by a requesting carrier to self-provision or use alternative databases does not appear to materially diminish the carrier's ability to provide the services it seeks to offer."<sup>91</sup>

**Proposed Issue Resolution:** WCOM seeks access to the CNAM database through bulk transfer as a network element. It cites technical feasibility, prevention of discrimination against CLECs, and promoting its ability to innovate in support of its claim that such access should be considered to be a UNE. WCOM has not claimed that the FCC has determined such access to be a UNE. Neither, however, has there been a substantiated claim that the participating states cannot decide that circumstances applicable in their jurisdictions make it appropriate to establish such access as a UNE.

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<sup>88</sup> *Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 99-238, FCC 99-238, 15 FCC Rcd 3696 ¶ 402 (Nov. 5, 1999) ("UNE Remand Order") (emphasis added).*

<sup>89</sup> UNE Remand Order ¶ 410.

<sup>90</sup> *Local Competition First Report & Order*, ¶ 485.

<sup>91</sup> UNE Remand Order ¶ 415.

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Taking WCOM's position as a request that the state commissions declare CNAM database bulk transfer as a UNE, in addition to those UNEs established by the FCC, what the FCC has said is adequate in the context of signaling databases is not dispositive. Nevertheless, WCOM has not laid a proper foundation for a determination that the access it seeks qualifies as a UNE under the applicable standards, including the impairment test, that states are to consider in making decisions about UNEs beyond those already established by the FCC. The only specific application cited by WCOM involved Caller ID. The unrebutted Qwest evidence is that:

- Qwest has no advantage over CLECs here, because it must still undertake the same activities as WCOM
- Bulk transfer of the database would leave WCOM still required to query the databases of entities other than Qwest.

Finally, WCOM has not presented any evidence that would demonstrate that self-provisioning or the use of alternative databases would materially affect its ability to offer its services. The absence of substantial evidence contrary to Qwest's evidence on these two points and the failure to make more than a very general and factually unsupported claim of necessity and impairment lead to the conclusion that WCOM has not established the conditions that would call for the establishment of bulk transfer of the CNAM database as an unbundled network element.

## **Checklist Item 7(III): Operator Services**

### **Background**

McLeodUSA's initial filing in this workshop raised a number of questions about operator services; beyond these initial questions, no participant filed testimony, comments, or brief.

### **Issues Resolved During this Workshop**

McLeodUSA raised several questions in its initial comments. Qwest generally responded to those questions by providing in its rebuttal filing answers explaining the rationale for the SGAT provisions questioned (a number of the questions were manifestly intended only to seek explanation, not to raise specific concerns) or by making SGAT changes that address issues underlying certain questions. Qwest's answers to questions reasonably explained the basis for SGAT sections questioned and its SGAT changes responded to the concerns that appear to have underlain other McLeodUSA's questions.<sup>92</sup> Moreover, McLeodUSA made no further inquiry or comment, nor did it file a brief following Qwest's response to the questions raised. Therefore, it is appropriate for the commissions to consider these issues, which are briefly described below, to have been resolved in a manner that is consistent with the public interest and with the requirement that Qwest comply with checklist item 7(iii).

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<sup>92</sup> *Qwest's response to the McLeodUSA questions on checklist item 7(III) is found in the Rebuttal Testimony of Lori A. Simpson, 11/03/00.*

1. *Definition of the Term “Nondiscriminatory”*

McLeodUSA sought further explanation of the SGAT Section 10.7 use of the term “nondiscriminatory.”<sup>93</sup> Qwest responded that the term generally has the same meaning that the FCC intends in its orders regarding addressing operator services. This response is reasonable, and, given the lack of follow-up by McLeodUSA, means that this issue can be considered closed.

2. *Forecasting Process*

McLeodUSA raised several questions about the SGAT Section 10.7.2.3 forecast process.<sup>94</sup> Qwest responded by modifying the section, by adding a new one on operator services, and by adding a corresponding forecasting provision related to customer service (the strikeout shows the deletion from Section 10.7.2.3):

*10.7.2.3 In order for CLEC to use Qwest’s operator services as a facility-based CLEC, CLEC must provide an operator service trunk between CLEC’s end office and the Interconnection point on the Qwest operator services switch for each NPA served. ~~CLEC must provide a forecast of the expected volume of calls.~~*

*10.7.2.14 At least ninety (90) days prior to using Qwest’s operator services, CLEC will provide a written forecast of the expected volume of operator services calls. Should CLEC plan to substantially increase or decrease its actual usage as forecast by more than twenty-five percent (25%) of originally forecast usage, CLEC will give Qwest advance written notice of such planned change at least sixty (60) days prior to implementing such changed use. CLEC will update its forecasts of operator services use, in writing annually, at least sixty (60) days prior to the anniversary date of its first forecast.*

*10.5.2.12 At least ninety (90) days prior to using Qwest’s directory assistance services, CLEC will provide a written forecast of the expected volume of directory assistance service calls. Should CLEC plan to substantially increase or decrease its actual usage as forecast by more than twenty-five percent (25%) of originally forecast usage, CLEC will give Qwest advance written notice of such planned change at least sixty (60) days prior to implementing such changed use. CLEC will update its forecasts of directory assistance service use, in writing annually, at least sixty (60) days prior to the anniversary date of its first forecast.*

These changes respond to the questions raised, and given the lack of follow-up by McLeodUSA, mean that this issue can be considered closed.

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<sup>93</sup> *McLeodUSA’s Comments at 4.*

<sup>94</sup> *Id.*

### 3. Vagueness of SGAT Section 10.7.2.8

In response to McLeodUSA's question about the vagueness of this provision,<sup>95</sup> Qwest proposed a clarification (strikeouts shows deletions; underlining shows additions):

*10.7.2.8 ~~It is understood that Qwest will~~ shall not be obligated to provide specific operator services to CLEC where there are facility or technically feasible and facilities are available ~~limitations. Qwest, in its reasonable discretion,~~ may from time-to-time modify and change the nature, extent, and detail of specific operator services available to its retail end users, and to the extent it does so, Qwest will provide forty-five (45) days advance written notice to CLEC of such changes.*

These changes respond to the questions raised, and given the lack of follow-up by McLeodUSA, mean that this issue can be considered closed.

### 4. Measuring Resource Commitment Fulfillment

McLeodUSA asked how a commission could measure Qwest's performance in providing the personnel and equipment necessary to perform operator services commitments under SGAT Section 10.7.2.9.<sup>96</sup> Qwest responded by noting the existence of ROC Performance Measures OS-1 and OS-2 and the fact that CLECs would know if Qwest is unable to provision an Operator Services trunk, which Qwest believes should be adequate to address the question of meeting commitments. This answer responds to the question raised, and given the lack of follow-up by McLeodUSA, means that this issue can be considered closed.

## Checklist Item 8: White Pages Directory Listings

### Background

Section 271(c)(2)(B)(viii) requires “[w]hite pages directory listings for customers of the other carrier's telephone exchange service.” Section 251(b)(3) requires all LECs to provide nondiscriminatory access to directory listings. The obligation includes: a) nondiscriminatory appearance and integration of white pages listings for CLEC customers, and b) CLEC customer listing that have the same accuracy and reliability as those of the ILEC's own customers.<sup>97</sup>

### Issues Resolved During this Workshop

The participants raised a number of issues about which they have been having ongoing dialogue, particularly in Section 271 workshops in other Qwest states. Some of those issues have been resolved among the parties contesting them. The later filings in this workshop and the briefs of the parties explain those resolutions. Other participants, particularly McLeodUSA, have raised

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Telecommunications Act, supra*, ¶ 253.

questions in their initial comments. Qwest generally responded to those questions by providing in its rebuttal filing answers explaining the rationale for the SGAT provisions questioned (a number of the questions were manifestly intended only to seek explanation, not to raise specific concerns) or by making SGAT changes to address the issues underlying the questions.

The parties' resolutions of the issues on which they have come into agreement are reasonable and appropriate; Qwest's answers to questions explaining the basis for SGAT sections questioned reasonably responded to the concerns that appear to have underlain other McLeodUSA's questions. Moreover, McLeodUSA made no further inquiry or comment, nor did it file a brief following Qwest's response to the questions raised. Therefore, it is appropriate for the commissions to consider these issues, which are briefly described below, to have been resolved in a manner that is consistent with the public interest and with the requirement that Qwest comply with Checklist Item 8.

### *1. Obliging Dex to Meet Qwest Commitments*

AT&T noted that Dex, the Qwest affiliate that publishes white pages listings, had no legal obligation under the SGAT to fulfill the requirements of Section 271.<sup>98</sup> AT&T sought a contractual obligation or warranty from Dex to commit the affiliate to publish listings in accord with Qwest's Section 271 obligations. AT&T offered language, which Qwest agreed to accept, to address this need:

*Qwest represents and warrants that any arrangement for the publication of white pages directory listings with an affiliate (including without limitation, Qwest Dex, Inc.) (an "Affiliate") requires such Affiliate to publish the directory listings of CLEC contained in Qwest's databases so that CLEC's directory listings are nondiscriminatory in appearance and integration, and have the same accuracy and reliability that such Affiliate provides to Qwest's customers.*

### *2. CLEC Listing Format*

McLeodUSA sought the deletion of the first sentence of SGAT Section 10.4.2.1, because there is no legal requirement that CLECs provide listings in any particular format.<sup>99</sup> Alternatively, McLeodUSA would not object if this sentence were discretionary. Qwest has proposed language that would allow CLECs to submit their listing electronically or by facsimile. The language is:

*10.4.2.1 CLEC will provide in standard format, by mechanized or by manual transmission to Qwest, its primary, premium, and privacy listings. Qwest will accept one primary listing for each main telephone number belonging to CLEC's end users at no charge.*

### *3. Language Changes for SGAT Section 10.4.2.4*

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<sup>98</sup> Wilson Affidavit at 12-13.

<sup>99</sup> McLeodUSA's Comments at 4.

McLeodUSA recommended two clarifications to the language of this provision.<sup>100</sup> Qwest agreed to the first, but altered the second, because it requires written permission from a CLEC to include its listing in files provided to white-pages directory publishers:

*10.4.2.4 If CLEC provides its end users' listings to Qwest, CLEC grants Qwest access to CLEC's end user listings information solely for use in its Directory Assistance List Service, except as provided in Section 10.4.2.5, and subject to the terms and conditions of this Agreement. Qwest will incorporate CLEC end user listings in the directory assistance database. Qwest will incorporate CLEC's end user listings information in all existing and future directory assistance applications developed by Qwest. Should Qwest cease to be a telecommunications carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.*

4. *Identifying Steps Required to Retain Privacy Indicators in Listings Databases*

McLeodUSA questioned what the term “reasonable steps” means in SGAT Section 10.4.2.9.<sup>101</sup> Qwest responded that it would follow “industry practices,” which is what the section explicitly requires. There may or may not be a need for more specificity to inform McLeodUSA about what industry practices entail. However, no other carrier expressed a problem about understanding what the term means. Moreover, while the SGAT offers only a general standard, it is nevertheless one that is not uncommon in establishing an allowed course of dealing between two experienced participants in an industry. Finally, to the extent that disputes arise, this standard provides a rational and adequate basis for a dispute resolver to determine what kind of evidence to take and how to make a final judgment.

5. *Reciprocity of SGAT Section 10.4.2.13*

In response to the McLeodUSA request that this provision be reciprocal<sup>102</sup>, Qwest stated that it was made so through language proposed for SGAT Section 10.4.2.23.1 (see Simpson Exhibit QWE-LAS-2). In response to a definition of what “commercially reasonable efforts” are in directory publishing, Qwest observed that the language was proffered by WCOM.

6. *Proofs of Authorization*

McLeodUSA questioned what proof is required under SGAT Section 10.4.2.18.<sup>103</sup> Qwest responded by proposing to revise the provision:

*~~10.4.2.18~~ Prior to placing listings orders on behalf of end users, CLEC shall be responsible for obtaining and have in its possession Proof of Authorization (“POA”), as set forth in Section 5.3 of this Agreement.*

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<sup>100</sup> *Id.* at 5.

<sup>101</sup> *Id.* at 5.

<sup>102</sup> *Id.* at 5.

<sup>103</sup> *Id.* at 6.

~~Upon request by US WEST, CLEC shall submit proof to US WEST of authorization from each end user for which CLEC submits a change in end user's listing.~~

Qwest's change makes the question of proof explicitly defined under another SGAT section. It adequately responds to the question.

7. *Opportunity to Verify CLEC Listings Accuracy*

Section 10.4.2.20 addresses Qwest's distribution of verification proofs and other means for CLECs to verify their listings' accuracy. McLeodUSA asked for a definition of what comprises that opportunity and how this provision relates to SGAT Section 10.4.2.21.<sup>104</sup> Qwest noted that Section 10.4.2.20 provides CLECs the opportunity to review their listings, while Section 10.4.2.21 expressly provides that they may edit them prior to the directory closing date. This answer responded to the question, which McLeodUSA did not further address through testimony, comment, or brief.

8. *Technical Amendments to SGAT Section 10.4.2.23*

Qwest agreed to make changes pursuant to McLeodUSA's suggestion<sup>105</sup>; the changes are set forth below:

*10.4.2.23 Pursuant to Sec. 222 (a), (b), (c), (d), and (e) of the Telecommunications Act, Qwest will provide subscriber lists information gathered in Qwest's capacity as a provider of local exchange service on a timely and unbundled basis, under non-discriminatory and reasonable rates, terms and conditions to CLEC upon request for the purpose of publishing directories in any format. Rates may be subject to federal or state law or rules, as appropriate. Upon request by CLEC, Qwest shall enter into negotiations with CLEC for CLEC's use of subscriber list information for purposes other than publishing directories, and Qwest and CLEC will enter into a written contract if agreement is reached for such use.*

Qwest's change addressed the suggestion of McLeodUSA.

**Issues Remaining in Dispute**

1. *Parity of Treatment for CLEC Listings*

AT&T raised in Arizona a concern that the information filed by Qwest suggested unequal treatment of CLEC listings, despite the suggestion of SGAT Section 10.4.2.11 that Qwest would "use the same processes and procedures" for CLEC listings. AT&T was concerned that additional steps required of CLECs create the potential for differential error and timeliness

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<sup>104</sup> *Id.* at 6.

<sup>105</sup> *Id.* at 6.

between CLEC listings and listing for Qwest's own end-use customers. AT&T was willing to consider the issue resolved, on the basis of workshop statements that CLEC and Qwest listings information was to be treated exactly the same throughout the Qwest region. However, AT&T's discrimination concern resurfaced as a result of the Regional Oversight Committee's Performance Measures Audit. That audit found that there are differences in treatment of CLEC and Qwest listings updates.<sup>106</sup> AT&T believes that this audit finding demonstrates that Qwest is not providing nondiscriminatory access to white page listings, as required by the Act.<sup>107</sup>

There are two Regional Oversight Committee Performance Measures (DB-1 and DB-2) that address parity between CLEC and Qwest customers in the areas of listing accuracy and reliability. AT&T had agreed that Checklist Item 8 could be conditionally approved, subject to examining post-testing and audit performance under these two measures. AT&T is no longer willing to make that agreement, given the aforementioned Regional Oversight Committee audit finding. AT&T's position is that Qwest cannot be considered to satisfy Checklist Item 8 until after it changes its white-page listings practices to assure parity of treatment.

Qwest says that AT&T's performance concerns are of the type that should be considered when the six states address Regional Oversight Committee's testing, audit, and other performance concerns. This workshop process, which is designed to work in parallel with the testing and audit processes, should not become duplicative of those parallel activities. Qwest acknowledges that it is obliged to respond to testing and audit findings in a manner that assures that recognized "problems" are corrected. Qwest believes that the audit response process will work adequately to determine whether Qwest provides white pages listings with the same accuracy and reliability as it provides listings to its own retail end users. Thus, according to Qwest, there is no reason why this workshop process should defer addressing the issue of whether Qwest has a legally binding obligation to provide white pages directory listings in a manner that satisfies checklist requirements. The workshop recommendation is conditional; it is clear that there will be later state review of the results of the testing and performance-measure auditing.

Qwest also believes that AT&T has inappropriately transformed a parity standard into a standard of equality. The Act, according to Qwest, does not require Qwest identical processes for CLECs, but only end results that are nondiscriminatory.<sup>108</sup> Qwest believes that its witness Simpson demonstrated substantial process similarity in treating CLEC and Qwest listings, where feasible.<sup>109</sup> In addition, Qwest argues that it has adequate procedures for minimizing errors in the distinct process aspects applicable to CLEC listings. The examples it cited include monthly verification proofs to CLECs, "on demand" reports that provide all of that CLEC's listings as of the date of the request, (processes that do not exist for Qwest's retail listings), and the ability to

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<sup>106</sup> See Attachment C to the Direct Testimony of Kenneth L. Wilson, *Exceptions 1005 and 1006 of the Qwest OSS Evaluation*, dated September 19, 2000.

<sup>107</sup> AT&T Brief at 34-35.

<sup>108</sup> *Memorandum Opinion and Order*, In the Matter of Application of BellSouth Corporation ..for Provision of In-Region, InterLATA Service in Louisiana, CC Docket No. 98-121, FCC 98-271, 13 FCC Rcd 20599 ¶253 (1998) ("Second BellSouth Louisiana Order").

<sup>109</sup> *Simpson Rebuttal Testimony at 11-15*



call Qwest's Listings Group to verify an individual listing.<sup>110</sup> Finally, Qwest has committed to providing electronic processing (where it does not already exist) for CLEC listings submitted electronically via IMA-GUI by April 1, 2001.<sup>111</sup>

AT&T contends that Qwest's request to modify the performance measures and Qwest's promise of future system changes to eliminate manual processing of CLECs listings does not put Qwest in compliance with the requirements of Checklist Item 8.<sup>112</sup> To support its claim that present, not future, compliance is the test, AT&T cites an FCC statement in another RBOC's 271-approval context:<sup>113</sup>

*The timing of a section 271 filing is one that is solely within the applicant's control. We therefore expect that, when a BOC files its application, it is already in full compliance with the requirements of section 271 and submits with its application sufficient factual evidence to demonstrate such compliance. Evidence demonstrating that a BOC intends to come into compliance with the requirements of section 271 by day 90 is insufficient.*

**Proposed Issue Resolution:** Qwest is admittedly in the process of making changes to its handling of directory-listing updates. Those updates are related to the completion of OSS testing that is now being performed by the ROC. In particular, Qwest is in the process of making these changes to respond to findings that have resulted from the Performance Measures Audit. The ROC has established audit-tracking mechanisms that are intended to validate the successful implementation of agreed changes in the methods by which Qwest measures its performance in serving CLECs. Therefore, there currently exists a comprehensive means by which Qwest's performance, insofar as it affects parity in database updates, will be examined. Moreover, the participating states already have stated that they will consider OSS test results, which necessarily includes the results of the Performance Measures Audit, at a later date.

The existence of parallel means of examining parity and of a later forum for addressing any lingering issues makes determination of them here premature. Moreover, since the issue raised goes to the heart of compliance with this checklist item, it would similarly be premature to recommend now that Qwest be deemed to have demonstrated compliance with all aspects of this checklist item. That recommendation can be made only after further examination of the information resulting from the still pending steps by Qwest to change its methods for updating directory listing and of the yet to commence audit activities that will examine the sufficiency of those changes after they are made.

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<sup>110</sup> Simpson Direct at 37; Simpson Rebuttal at 12.

<sup>111</sup> As noted, facilities-based CLECs that use IMA-EDI have their listings electronically processed today. Some CLECs, including AT&T on occasion, choose to submit listing information via facsimile rather than electronically, and those listings necessarily require manual processing. This is no surprise to those CLECs who choose to submit their listings manually.

<sup>112</sup> AT&T's Brief at 37.

<sup>113</sup> Ameritech Michigan Order, ¶ 55.

## 2. *Reciprocity Concerning Release of Listings to Third Parties*

McLeodUSA said that SGAT Section 10.4.2.5 should be reciprocal.<sup>114</sup> Qwest objected on grounds related to its own concerns about use of its data and concerns about violating conditions under which it has received data from independent telephone companies and from other CLECs. Moreover, Qwest observed that the section does not give Qwest an unfettered right to provide CLEC listing information to third parties that are not directory assistance providers; CLECs must consent to that release.

McLeodUSA provided no testimony, comment, or brief to identify or describe what it means by the term “reciprocal” in this context. Nor is it self-evident how the term would be applied. The rebuttal testimony of Qwest witness Simpson suggested that it may mean that Qwest should allow a CLEC to sell Qwest listings in cases where that CLEC has allowed Qwest to sell the CLECs listings.

Ms. Simpson’s interpretation does not necessarily capture the issue underlying McLeodUSA’s concern, but no other logical interpretation is apparent. If Qwest correctly judges the intent of McLeodUSA, then it may be concluded that McLeodUSA has taken an inappropriate view of reciprocity from a business perspective. The existing language does provide reciprocity in a direct and tangible sense; it gives each of the involved carriers the same right, which is to decide whether the other should be allowed to sell its listings. This approach allows each carrier to judge and capture the value of its information in the marketplace. The other approach would make each carrier the judge for the other. Such an approach cannot make sense as a default rule, assuming it ever can, unless it is reasonably certain that there is relative equality in market value or utility between the two sets of listings.

There is no basis for making such a presumption about value; therefore, the McLeodUSA suggestion, as interpreted by Qwest’s rebuttal testimony, would not constitute an appropriate approach. Moreover, Qwest cited concerns about limits on use of its information that arise from the specific circumstances under which Qwest has secured it from other CLECs and from reasons of listing privacy. Thus, even if reciprocal permission to sell information based on the unilateral decision of a CLEC were a reasonable approach in concept, it would raise substantial implementation problems: Qwest would still have to comply with the conditions under which it has secured listing information from other CLECs and assurances made to its customers that private information will remain so.

Accordingly, there is no basis for finding that the obligations under SGAT Section 10.4.2.5 should be made reciprocal.

## 3. *Applicability of Tariff Liability Limits*

McLeodUSA argued that SGAT Section 10.4.2.6 violates the “filed tariff” doctrine.<sup>115</sup> Qwest rebuttal witness Simpson said she was not aware of that doctrine or of the basis for the argument.

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<sup>114</sup> *McLeodUSA’s Comments* at 5.

<sup>115</sup> *Id.* at 5.

Moreover, according to Qwest witness Simpson, the section clearly preserves what existing state tariffs provide. To the extent that one might argue that the SGAT becomes a tariff for purposes of McLeodUSA's argument (whether or not that argument is sound), all Section 10.4.2.6 does is effectively incorporate prior tariffs by reference into the SGAT. Therefore, there is no basis for questioning the efficacy of this SGAT section on the grounds alleged by McLeodUSA.

4. *CLEC Knowledge of State Laws Involving Listings*

McLeodUSA recommended deletion of SGAT Section 10.4.2.15, because it makes CLECs solely responsible for knowing and adhering to state laws regarding listings.<sup>116</sup> Qwest responded that the provisions' purpose is to protect Qwest from failures of CLECs to follow state law in what they provide to Qwest, not to absolve Qwest of any of its obligations for its own actions.

The issue of who is responsible is principally relevant in cases where a CLEC has provided Qwest with CLEC listing information that does not conform to state requirements. To the extent someone bears responsibility to customers or to regulators for CLEC-supplied information, it logically should be the entity providing the information (which is the CLEC), not the party receiving it. This is particularly true where the information is about customers served by the CLEC, not by Qwest. This rule should apply unless there are special circumstances that give the recipient more ability to control information accuracy than the provider has. It is not apparent that such circumstances might exist. Therefore, it is reasonable to make the information provider, i.e., the CLEC, responsible for conformity with state requirements involving CLEC-customer information that CLECs provide to Qwest.

5. *Adding a Section 222(e) reference to SGAT Section 10.4.2.16*

McLeodUSA suggested a rewrite of the SGAT section to cite its consistency with Section 233(e) of the Act and to include the FCC's rates for CLEC provision to Qwest of listing information.<sup>117</sup> Qwest declined, stating that it is not required to "serve as the conduit for providing CLEC subscriber list information to directory publishers."<sup>118</sup> Qwest also considers the revision outside the scope of Checklist Item 8. McLeodUSA has made no argument connecting its request with compliance under this checklist item, nor is any apparent. Therefore, there is no basis for determining that Qwest is not in such compliance in the absence of the inclusion of the reference requested by McLeodUSA.

6. *Adding the Term "Contractor" to SGAT Section 10.4.2.26*

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 5.

<sup>118</sup> *Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-98, 99-273, 14 FCC Rcd 15550 ¶ 8 (Sept. 9, 1999).*

First, McLeodUSA suggested adding the “contractor” after the word “Affiliate” to the section addressing Qwest’s responsibility for the customer guide pages.<sup>119</sup> As written, the section applies to Qwest and to any affiliate that may publish directories. Qwest opposed adding the term, because contractors are not subject to the same legal obligations as are Qwest and its affiliates.

Qwest’s concern about the use of the term contractor is misplaced. Qwest agrees (by the explicit language of Section 10.4.2.26) that an affiliate should have to include customer guide pages. Suppose that Qwest made an arrangement by which an unaffiliated party, rather than an affiliate, undertook directory-publishing responsibilities. There is no evident reason why that unilateral decision by Qwest should affect whether the directory includes customer guide pages. This section of the directory has the same purpose and value to CLECs and their customers, whether Qwest, an affiliate or an unaffiliated party (*i.e.*, a “contractor”) publishes the directories involved. Therefore, this SGAT section should include the term “contractor” in order to extend the obligation to provide customer-guide pages to any party who publishes directories under an agreement with Qwest. Otherwise, there may be competitive harm should the CLEC information provided by those pages be omitted.

Second, McLeodUSA sought to include language requiring the customer guide section to identify state commission and consumer advocate contacts. Qwest objected, because it is not clear what “state law or regulation” requires publication of the information or how it relates to compliance with Checklist Item 8.

McLeodUSA overreaches in seeking to use the SGAT as the vehicle for assuring that directories include any required state commission or consumer advocate contacts. If law requires such contact information, then each commission can adequately determine under its general regulatory authority how notice should be provided. McLeodUSA has not shown how such notice requirements might be a function of what type of carrier provides local exchange service. In fact, requirements of this type are generally applicable to all customers of all carriers. Insofar as the need for advising customers of the ways to contact regulators or consumer advocates, there is nothing peculiar to the CLEC/Qwest relationship that suggests the issue should be addressed in an SGAT.

## *7. Dex’s Continuation as Directory Publisher*

McLeodUSA said that Qwest should anticipate the possibility that Dex may not continue as Qwest’s primary directory publisher by changing SGAT Section 15.0 to account for it.<sup>120</sup> Qwest said it would make changes to the SGAT if and when that event occurs. The Qwest approach is reasonable; the SGAT cannot be expected to anticipate events that are speculative.

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<sup>119</sup> *McLeodUSA’s Comments at 6.*

<sup>120</sup> *Id. at 6.*

## Checklist Item 9: Numbering Administration

### Background

Section 271(c)(2)(B)(ix) requires "nondiscriminatory access to telephone numbers" for assignment to the telephone exchange service customers of CLECs. Such access must be provided until the establishment of telecommunications numbering administration guidelines, plans, or rules. After that, Qwest must comply with such guidelines, plans, or rules."<sup>121</sup> The FCC has said that nondiscriminatory access to telephone numbers requires a LEC "to permit competing providers access to these numbers that is identical to the access that the LEC provides to itself."<sup>122</sup> The FCC will look specifically at the circumstances and business practices governing Central Office code administration.<sup>123</sup> The FCC also prohibits LECs from unduly favoring or disfavoring any particular segment or group of telecommunications consumers.<sup>124</sup>

Only Qwest and AT&T offered testimony or comments about numbering administration. The Wilson Affidavit on behalf of AT&T raised three issues<sup>125</sup>:

- Location Routing Number ("LRN")
- Number Reassignment
- Qwest's Provisioning of CLEC NXX Prefixes.

There is agreement among the parties to treat the LRN issue under Checklist Item 1 and the number reassignment issue under Checklist Item 11. Workshop One, which is still in progress, addresses these checklist items.

The third AT&T concern is about slow provisioning of new CLEC prefixes in the past. Qwest has stated that these problems have been corrected. Both Qwest and AT&T appear to agree that actual Qwest performance under ROC Performance Measure NP-1 will provide the best evidence on the question of parity of service. AT&T recommends deferring the consideration of this issue until after completion of the ROC collaborative PMA of OSS testing activities.<sup>126</sup> Qwest objects to complete deferral, asking instead for a conditional determination that Qwest complies with this checklist item, subject to review of audited performance results under Performance Measure NP-1.

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<sup>121</sup> 47 U.S.C. § 271(c)(2)(B)(ix).

<sup>122</sup> *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 Local Competition Second Report and Order*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd at 19446-47, (released August 8, 1996) ("*Local Competition Second Report and Order*").

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at amendment to Part 52, Subpart B, 52.9 (a)(2).

<sup>125</sup> *Wilson Affidavit* at 13.

<sup>126</sup> *Wilson Affidavit* at 18.

## Checklist Item 10: Call-Related Databases And Signaling

### Background

Section 271(c)(2)(B)(x) of the competitive checklist requires “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”<sup>127</sup> The FCC has designated signaling networks and call-related databases as network elements, and has concluded that incumbent LECs must provide for the exchange between CLECs of signaling information necessary to exchange traffic and access call related database.<sup>128</sup> The FCC has identified the scope of required access as including “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (“SMS”); and to design, create, test, and deploy Advanced Intelligent Network (“AIN”) based services at the SMS through a Service Creation Environment (“SCE”).<sup>129</sup>

### Issues Resolved During this Workshop

The participants raised a number of issues about which they have been having ongoing dialogue, particularly in section 271 workshops in other Qwest states. Some of those issues have been resolved among the parties contesting them. The later filings in this workshop and the briefs of the parties explain those resolutions. Other participants, particularly McLeodUSA, have raised a number of questions in their initial comments. Qwest generally responded to those questions by providing in its rebuttal filing answers explaining the rational for the SGAT provisions questioned (a number of the questions were manifestly intended only to seek explanation, not to raise specific concerns).

The parties’ resolutions of the issues on which they have come into agreement are reasonable and appropriate; Qwest’s answers to questions explaining the basis for SGAT sections questioned, and the Qwest SGAT changes reasonably responded to the concerns that appear to have underlain other McLeodUSA questions.<sup>130</sup> Moreover, McLeodUSA made no further inquiry or comment, nor did it file a brief following Qwest’s response to the questions raised. Therefore, it is appropriate for the commissions to consider these issues, which are briefly described below, to have been resolved in a manner that is consistent with the public interest and with the requirement that Qwest comply with checklist item 10.

#### *1. Commingling of Access to Signaling in the SGAT*

AT&T expressed concern about commingling of access to signaling for interconnection and signaling as an unbundled element in the Qwest SGAT, as a result of the placement of the

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<sup>127</sup> 47 U.S.C. § 271(c)(2)(B)(x).

<sup>128</sup> 47 C.F.R. § 51.319; *BellSouth Second Louisiana Order*, ¶ 266.

<sup>129</sup> *BellSouth Second Louisiana Order*, ¶ 267; *Bell Atlantic New York Order*, ¶ 365.

<sup>130</sup> *Rebuttal Testimony of Margaret S. Bumgarner*, 11/03/00 at 13-14.

discussion of signaling in the SGAT section (9.4) dealing with unbundled loops. Qwest has agreed to clarifying language that AT&T finds acceptable.<sup>131</sup> That language is set forth below:

*9.13.1.1 Qwest will offer unbundled access to its signaling network to CLECs that request signaling as an unbundled network element or as part of a UNE combination. Access to Qwest's signaling network for purposes of interconnection and the exchange of traffic is addressed in Section 7 of this Agreement.*

## *2. Requiring the Use of Intermediate Frames*

AT&T also objected to the Qwest requirement that signaling trunks traverse ICDF or SPOT frames in collocation situations. This issue is essentially the same as the direct interconnection issue, which, as described in the discussion of Checklist Item 7(I) (911/E911) section of this report, has been resolved to the satisfaction of both parties.

## *3. Language Consistency between SGAT Sections 9.15.1.2 and 9.15.1.4*

As it did with respect to the other checklist items at issue here, McLeodUSA provided a series of questions about various sections of the Qwest SGAT, but did not raise any explicit objections to any of them.<sup>132</sup> Qwest responded to these questions in the rebuttal filing of its witness Bumgarner. At least one of the questions, why Qwest did not use the term “to the extent possible” in one SGAT Section dealing with the Line Information Database (9.15.1.2), but did do so in another (9.15.1.4), appeared to be simply a request for information.

## *4. Need for Established Time Frames for Data Uploads*

McLeodUSA also questioned whether there is a need to establish time frames regarding the loading and updating of data to ensure parity.<sup>133</sup> Qwest's response in its rebuttal testimony noted that this issue is addressed in both SGAT Section 9.15.2.2, and in two performance measures (DB-1 and DB-2) that the ROC has established. This answer responds to McLeodUSA's question.

## *5. Electronic Access to LIDB Storage*

In the context of SGAT Section 9.15.1.3, McLeodUSA asked when electronic access to LIDB storage would be available and what it would cost.<sup>134</sup> Qwest responded in its rebuttal testimony by stating that it performs daily electronic updates by loading electronic files supplied by CLECs, but that low CLEC demand for LIDB access has caused Qwest not to make further updates to date. As to cost, Qwest says that it charges only its outside vendor costs for the initial load of a CLEC's data, but does not charge for updates. No party, including McLeodUSA has challenged Qwest's evidence about low CLEC demand.

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<sup>131</sup> Wilson Affidavit at 20.

<sup>132</sup> McLeodUSA's Comments at 6.

<sup>133</sup> Id. at 6-7.

<sup>134</sup> Id. at 7.

## 6. Overload Conditions

McLeodUSA raised several questions about overload conditions and remedies, in connection with SGAT Sections 9.17.2.8, 9.17.2.9, and 9.17.2.12.<sup>135</sup> Qwest responded in the rebuttal testimony of Ms. Bumgarner that network controls to prevent SS7 network overloading will generally be imposed on all messages, and that Qwest will place specific controls on an individual carrier when it determines that abnormal volumes from that carrier are the ones causing or threatening detrimental effects on all carriers. Qwest also said in this testimony that it defines “excessive” CLEC calls as those exceeding SGAT-defined, industry standards and requirements or the terms and conditions for SS7 signaling.

Qwest’s answer establishes that the general controls will apply to all messages, which is responsive to the concern about placing a disproportionate impact on CLECs. Additional controls will only apply where a carrier is producing “abnormal” volumes, which is a Qwest determination that will be subject to outside review of its reasonableness. It is not clear (McLeodUSA made no specific proposal either before or after Qwest supplied its answer) how detailed, objective criteria covering all or even most network conditions could be established to address these abnormal situations. Moreover, the term “excessive” is defined by reference to industry standards.

## Checklist Item 12: Local Dialing Parity

### Background

Section 271(c)(2)(B)(xii) requires “nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).” Section 251(b)(3) creates “the duty to provide dialing parity to competing providers of telephone exchange service”. Section 153(15) of the Act defines parity as requiring that a CLEC be able to:

*“... provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).”*

Qwest argues that approval of this checklist item need not await the completion of the ROC PMA any OSS testing, for two reasons. First, Qwest notes that the ROC has not developed

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<sup>135</sup> *Id.* at 7.



performance measures or standards for dialing parity. Second, Qwest states that the FCC's *Second Local Competition Order* has determined that such measures are unnecessary.<sup>136</sup>

### **Issues Resolved During this Workshop**

#### *1. Dialing Parity for Lines Provisioned by UNE-Ps*

AT&T expressed concern about dialing parity for lines provisioned by Unbundled Network Element Platforms ("UNE-Ps"). Both Qwest and AT&T agree that Qwest has made modifications to Sections 9.23.3.9.1 and 9.23.3.9.3 of the SGAT that are sufficient to address this concern.<sup>137</sup>

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<sup>136</sup> *Second Report and Order and Memorandum Opinion and Order*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98 et al., FCC 96-333, 11 FCC Rcd 19392 ¶162 (Aug. 8, 1996).

<sup>137</sup> *Wilson Affidavit* at 23.

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## **APPENDIX A-1**

### **MULTI STATE PAPER WORKSHOP SGAT LITE (3/5/01)**

#### **9.13.1 Description**

9.13.1.1 Qwest will provide CLEC with non-discriminatory access to signaling networks, including signaling links and Signaling Transfer Points (STP), call-related databases and Service Management Systems (SMS) on an unbundled basis. The individual call-related databases and associated SMS are addressed in Sections 9.14 – 9.17. Access to Qwest's signaling network provides for the exchange of signaling information necessary to exchange traffic and access call-related databases. Signaling networks enable CLEC the ability to send SS7 messages between its switches and Qwest's switches, and between CLEC's switches and those third party networks with which Qwest's signaling network is connected. CLEC may access Qwest's signaling network from a CLEC switch via unbundled signaling and unbundled signaling transport elements between CLEC's switch and Qwest STPs. CLEC may access Qwest's signaling network from each of its switches via a signaling link pair between its switch and the Qwest STPs. CLEC may make such connection in the same manner as Qwest connects one of its own switches to STPs. Access to Qwest's signaling network for purposes of Interconnection and the exchange of traffic is addressed in Section 7. The Common Channel Signaling used by the Parties shall be Signaling System 7.

9.13.1.2 Common Channel Signaling Access Capability/Signaling System 7 (CCSAC/SS7) provides multiple pieces of signaling information via the SS7 network. This signaling information includes, but is not limited to, specific information regarding calls made on associated Feature Group D trunks and/or LIS trunks, Line Information Database (LIDB) data, Local Number Portability (LNP), Custom Local Area Signaling Services (CLASS), 8XX set up information, Call Set Up information and transient messages.

9.13.1.3 Optional Features of CCSAC/SS7 are dependent on specific CLEC design requirements as well as the existence of adequate transport facilities. Transport facilities must be in place to accommodate Call Set Up of related Feature Group D and/or LIS messages, transient messages, and other ancillary services (e.g., LIDB data and 8XX set up information).

#### *9.13.2 Terms and Conditions*

9.13.2.1 All elements of the unbundled CCSAC/SS7 arrangement will be developed on an individual case basis based on CLEC's design requirements. All of CLEC's unbundled design elements are subject to facility requirements identified below.

9.13.2.2 At a minimum, transport facilities must exist from CLEC's Point of Presence or Signaling Point of Interface (SPOI) to the identified Qwest STP location. Unbundled transport facilities to accommodate CCSAC/SS7 signaling may be developed

using unbundled network elements (UNEs) as defined in Section 9.

9.13.2.3 CLEC's CCSAC/SS7 design requirements will include, but are not limited to:

9.13.2.3.1 STP Port - This element is the point of termination to the signal switching capabilities of the STP. Access to a Qwest STP Port is required at a DS0 level.

9.13.2.3.2 Specific Point Code detail including the identification of CLEC's Originating, Destination and Signaling Options (i.e., ISDN User Part [ISUP] or Transaction Capabilities Application Part [TCAP] requirements).

9.13.2.3.3 All signaling routing requirements will be identified in CLEC's design. CLEC will provide industry standard codes identifying Qwest end offices, tandems, sub-tending end offices and STPs that will be included in the designed unbundled signaling arrangement.

9.13.2.4 The CCSAC/SS7 unbundled arrangement must meet the following requirements:

9.13.2.4.1 Both Qwest and CLEC are obligated to follow existing industry standards as described in Bellcore documents including but not limited to GR-905 CORE, GR-954-CORE, GR-394-CORE and U S WEST Technical Publication 77342.

9.13.2.4.2 CLEC's switch or network SS7 node must meet industry and Qwest certification standards.

9.13.2.4.3 Unbundled transport facilities as identified in Section 9 of this Agreement must be provisioned at a minimum DS1 capacity at CLEC's Point of Presence or SPOI. This facility must be exclusively used for the transmission of network control signaling data.

9.13.2.4.4 Calling Party Number (CPN), or a reasonable alternative, will be delivered by each Party to the other, in accordance with FCC requirements, when received from another carrier or from the telephone equipment of the end user.

9.13.2.4.5 Carrier Identification Parameter (CIP) will be delivered by CLEC to Qwest in accordance with industry standards, where technically feasible.

9.13.2.4.6 Provisions relating to call related databases (i.e., 8XX, LIDB, Advanced Intelligent Network (AIN), etc.) are contained in other Sections of this Agreement. For example, LNP is described in Section 10.2, AIN in Section 9.14, LIDB in Section 9.15, 8XX in Section 9.16, and ICNAM in Section 9.17.

### **9.13.3 Rate Elements**

Rates and charges for the unbundled CCSAC/SS7 elements will be assessed based on CLEC's specific design requirements. Both nonrecurring and monthly recurring rates may be applicable.

Message rating applies to all messages traversing the Qwest signaling network. Messages which are transient in nature (not destined for Qwest databases) will be assessed message rates. Pricing detail is provided in Exhibit A of this Agreement. Rate elements for unbundled CCSAC/SS7 elements are:

9.13.3.1        Nonrecurring Rates. CCSAC Option Activation Charge – Assessed for adding or changing a point code in the signaling network. Qwest will charge CLEC based upon its selection of either basic or database activation, as detailed in Exhibit A of this Agreement.

9.13.3.2        Recurring Rates

9.13.3.2.1      STP Port - a monthly recurring charge, per connection into the STP.

9.13.3.2.2      Signal Formulation Charge - a per call set up charge for formulating the ISUP message at a SS7 SP/SSP.

9.13.3.2.3      Signal Transport Charge - a per call set up request or data request charge for the transmission of signaling data between the local STP and an end office SP/SSP. This rate element includes separate charges for ISUP and TCAP messages.

9.13.3.2.4      Signal Switching Charge - a per call set up request or data request charge for switching an SS7 message at the local STP. This rate element includes separate charges for ISUP and TCAP messages.

#### *9.13.4 Ordering*

9.13.4.1        CCSAC/SS7 unbundled CLEC-designed elements will initially require design information from CLEC. Ordering for CCSAC/SS7 will be handled on an individual basis, using service activation meetings between CLEC and Qwest. CLEC will provide a Translation Questionnaire, Link Data Sheet and ASR during the service activation meetings.

9.13.4.2        Qwest will provide jeopardy notification, Design Layout Reports (DLR), Completion Notification and Firm Order Confirmation (FOC) in a non-discriminatory manner.

9.13.4.3        Due date intervals for CCSAC/SS7 will be established on an individual case basis.

#### *9.13.5 Maintenance and Repair*

The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC cross connections will be repaired by CLEC and Qwest cross connections will be repaired by Qwest. Maintenance and Repair processes are contained in Section 12 of this Agreement.

## **9.14 AIN Services**

### *9.14.1 Description*

AIN services are offered and available as an enhancement to CLEC's SS7 capable network structure and operation of AIN Version 0.1 capable switches.

9.14.1.1 AIN Customized Services (ACS) - Allows CLEC to utilize Qwest's AIN service application development process to develop new AIN services or features. ACS is determined on an individual case basis. The elements are also combined on an individual case basis to meet CLEC's request. Services developed through the ACS process can either be implemented in Qwest's network or handed off to CLEC to be installed in its own network.

9.14.1.2 AIN Platform Access (APA) - This service allows CLEC to provide to its end users any AIN service that is deployed for CLEC utilizing the ACS process in Qwest's SCP. Qwest is responsible for the provisioning of these AIN services. CLEC will be able to populate data for provisioning of the Call Processing Records (CPRs) stored in the SCP for AIN services. The process to provision, modify or update information in the AIN databases is predominately manual.

9.14.1.3 AIN Query Processing (AQP) - TCAP queries are used to collect information from the AIN database for use in call processing of the AIN based services above. CLEC launches a query from an AIN capable switch over the SS7 network to the Qwest Signal Transfer Point (STP). This query is directed to Qwest's SCP to collect data for the response to the originating switch.

### *9.14.2 Terms and Conditions*

9.14.2.1 AIN Customized Services (ACS) - Since each proposed service is unique and complex, when ACS is ordered, Qwest conducts a feasibility study which estimates the amount of time and cost necessary to develop the proposed service or enhancement. The charges associated with the feasibility analysis, development and implementation shall be established pursuant to the BFR process as described in this Agreement. The service is developed and tested in a Qwest lab environment. If the service is implemented in Qwest's network, it goes through network test prior to implementation.

#### **9.14.2.2 AIN Platform Access (APA)**

9.14.2.2.1 Prior to activation of the AIN feature, CLEC's switch point code must be activated for AIN processing on the CCSAC/SS7 link (described in this Section) that is transporting the AIN query.

9.14.2.2.2 Qwest will provide requirements for data load preparation and delivery by CLEC.

9.14.2.2.3 In order to make AAOS service work, service logic must be loaded in the AIN application to provision an AIN service on the platform for CLEC.

Qwest is responsible for provisioning the Call Processing Record (CPR) in the SCP.

9.14.2.2.4 Each end user line must be provisioned by the facility owner. CLEC is responsible for setting the AIN trigger in its switch.

9.14.2.2.5 AIN Query Processing. Qwest will certify and test CLEC switch for AIN message transmission to assure quality performance as described in this Section. Qwest and CLEC will test cooperatively.

### *9.14.3 Rate Elements*

9.14.3.1 AIN Customized Services (ACS). Hourly rates are applicable for each component of the ACS service according to the estimates determined in the feasibility analysis. The specific charges for each component and the terms and conditions for payment shall be described in the BFR response described above.

9.14.3.2 AIN Platform Access (APA). APA is billed a monthly recurring and a one-time nonrecurring charge for each AIN feature activated, per telephone number.

9.14.3.3 AIN Query Processing. The AIN service rates will be developed and assessed in accordance with the specific service requested by CLEC.

### *9.14.4 Ordering*

9.14.4.1 ACS is ordered on an individual case basis and is coordinated through the Qwest Account Manager and Product Manager. Due date intervals for the proposal phase are detailed below:

- (a) Within five (5) business days of an inquiry, Qwest will provide CLEC with the Service Request Form.
- (b) Within ten (10) business days of receiving the Service Request, Qwest will provide a written acknowledgment of receipt.
- (c) Within fifteen (15) business days of acknowledgment, Qwest will assess the Service Request and prepare for a meeting with CLEC to review the Service Request.
- (d) Qwest will be available to attend a Service Request Meeting within five business days of the completion of the assessment. The Service Request will be considered accepted once Qwest and CLEC come to an agreed-upon understanding of the service feature set and scope.
- (e) Within thirty (30) business days of acceptance of the Service Request, Qwest will provide a response, the Service Evaluation, which includes an initial service evaluation and development time and cost estimates.

- (f) Within ninety (90) business days of end-user approval of the Service Evaluation, Qwest will complete a Feasibility Analysis, which includes development time and costs.

Remaining deliverables are negotiated with CLEC so that mutually-agreeable due dates based on service complexity are established.

9.14.4.2 APA is ordered using the LSR form.

9.14.4.3 In the event that miscellaneous charges apply, they will be applied consistent with the application used for equivalent services ordered by Qwest end users.

9.14.4.4 Upon receipt of a complete and accurate LSR, Qwest will load CLEC records into the AIN database within ten days. Qwest will also establish translations at the STP to allow query access from CLEC switch within ten (10) days.

9.14.4.5 Completion notification will be either by e-mail or by fax.

9.14.4.6 AIN Query Processing (AQP) – is specific to the service ordered and must be established at the time of the APA ordering process.

## **9.15 Interconnection to Line Information Database (LIDB)**

### *9.15.1 Line Information Database (LIDB) Storage*

#### **9.15.1.1 Description -- LIDB Storage**

9.15.1.1.1 Line Information Database (LIDB) stores various telephone line numbers and Special Billing Number (SBN) data used by operator services systems to process and bill Alternately Billed Services (ABS) calls. The operator services system accesses LIDB data to provide originating line (calling number), billing number and terminating line (called number) information. LIDB is used for calling card validation, fraud prevention, billing or service restrictions and the sub-account information to be included on the call's billing record.

9.15.1.1.2 Telcordia GR-446-CORE defines the interface between the administration system and LIDB including specific message formats (Telcordia's TR-NWP-000029, Section 10).

#### **9.15.1.2 Terms and Conditions -- LIDB Storage**

CLEC will provide initial data, add, update or delete data, and license said data to Qwest for placement in Qwest's LIDB. CLEC will provide and maintain necessary information to enable Qwest to provide LIDB services. CLEC will ensure, to the extent possible, the accuracy of the data provided to Qwest for storage in Qwest's LIDB, and supply updated and changed data in a timely manner.

### 9.15.1.3 **Rate Elements -- LIDB Storage**

LIDB Data Storage does not have a recurring charge. When electronic access becomes available, a one-time non-recurring fee may be charged for the initial load of CLEC's data into LIDB.

### 9.15.1.4 **Ordering -- LIDB Storage**

Qwest will be responsible for loading and updating CLEC's line records into the LIDB database from the data provided by CLEC. The establishment of CLEC line records will be provisioned through an interim manual process. Updates, adds, changes and deletions subsequent to the initial file for establishment must be e-mailed to Qwest. Emergency updates (adds, changes, deletes) may be faxed. CLEC is responsible for the accuracy of the data which is sent to Qwest. Inquiries from CLEC must be faxed to Qwest using the approved forms appropriate for the type of inquiry requested.

## *9.15.2 Line Validation Administration System (LVAS) Access*

### 9.15.2.1 **Description -- LVAS Access**

9.15.2.1.1 LVAS is the comprehensive administrative management tool which loads the LIDB data and coordinates line record updates in Qwest's redundant LIDB databases. LVAS is the vehicle which Audits stored information and assures accurate responses.

9.15.2.1.2 LVAS access is available only to facility-based CLECs.

### 9.15.2.2 **Terms and Conditions -- LVAS Access**

9.15.2.2.1 CLEC will provide Qwest with the following information:

- a) The LIDB service requested (*i.e.*, calling name, calling cards, Originating Line Number Screening (OLNS), ABS, etc.);
- b) CLEC's Revenue Accounting Office (RAO), Operating Customer Number (OCN), and/or Local Service Provider Identification (LSPI);
- c) The NPA NXX and signaling point codes for the operator or end office switches from which queries are launched;
- d) The identity of CLEC's SS7 provider for Number Portability, ABS, OLNS and calling name;
- e) The identity of CLEC's operator services provider for ABS queries;
- f) A forecast for changes in volumes of line records, both increases and decreases; and
- g) The contact names and fax numbers of all CLEC personnel to be contacted for fraud notification and LIDB data administration.



9.15.2.2.2 CLEC will e-mail to Qwest all updates, adds, changes, and deletions to the initial file in ASCII format.

9.15.2.2.3 Within one (1) business day of receipt of the file, Qwest will attempt to load the file into LVAS. If Qwest successfully loads the file into LVAS, the originator of CLEC's files will be notified by Qwest.

9.15.2.2.4 In the event that Qwest is not successful in loading the file because errors were detected, Qwest will e-mail the file back to CLEC with an error notice.

9.15.2.2.5 Reserved for Future Use.

9.15.2.2.6 Qwest will provide to CLEC the necessary methods and procedures when the LVAS electronic interface becomes available.

### **9.15.2.3 Rate Elements -- LVAS Access**

9.15.2.3.1 LIDB Line Record Initial Load Charge - CLEC shall reimburse Qwest for all charges Qwest incurs relating to the input of CLEC's end user line record information, including the formatting of data so that it may be loaded into LVAS.

9.15.2.3.2 Mechanized Service Account Update - LVAS Access is the product which allows CLEC to add, update and delete telephone line numbers from the Qwest LIDB for CLEC's end users. Qwest will charge CLEC for each addition or update processed.

9.15.2.3.3 Individual Line Record Audit - CLEC may verify the data for a given ten (10) digit line number using an inquiry of its end user data.

9.15.2.3.4 Account Group Audit - CLEC may Audit an individual Account Group NPA-NXX.

9.15.2.4 Expedited Request Charge for Manual Updates - CLEC may request an expedited manual update to the LIDB database that requires immediate action (*i.e.*, deny PIN number). Qwest shall assess CLEC an expedited request charge for each manual update.

9.15.2.5 Ordering - LVAS Access.

LVAS report queries from CLEC must be faxed to Qwest MDAS center using the approved forms appropriate for the type of inquiry requested.

9.15.2.6 Billing - Line Validation Administration System (LVAS) Access.

When electronic access becomes available, a per query rate may apply to each Mechanized Service Account Update, Individual Line Record Audit, Account Group Audit, and Expedited Request Charge for Manual Updates.

### 9.15.3 *LIDB Query Service*

#### 9.15.3.1 Description - LIDB Query Service

9.15.3.1.1 LIDB Query Service provides information to query originators for use in processing Alternately Billed Services (ABS) calls. ABS call types include calling card, billed to third number, and collect calls.

9.15.3.1.2 On behalf of CLEC, Qwest will process LIDB queries from query originators (Telecommunications Carriers) requesting CLEC telephone line number data. Qwest allows LIDB query access through Qwest regional STPs.

#### 9.15.3.2 Terms and Conditions - LIDB Query Service

9.15.3.2.1 All LIDB queries and responses from operator services systems and end offices are transmitted over a CCS network using a Signaling System 7 (SS7) protocol (TR-NWT-000246, Bell Communications Research Specification of Signaling System 7).

9.15.3.2.2 The application data needed for processing LIDB data are formatted as Transaction Capabilities Application Part (TCAP) messages. TCAP messages may be carried as an application level protocol using SS7 protocols for basic message transport.

9.15.3.2.3 The SCP node provides all protocol and interface support. CLEC SS7 connections will be required to meet Bellcore's GR905, TR954 and Qwest's Technical Publication 77342 specifications.

9.15.3.2.4 Qwest will include CLEC-provided data in Qwest's LIDB in accordance with section 9.15.1 (LIDB Storage), and allow access to the data subject to Qwest negotiated agreements with Telecommunications Carriers, allowing CLEC's end users the same benefits of said agreements as enjoyed by Qwest end users. Qwest will update CLEC data, as requested by CLEC. Qwest will perform services provided hereunder and determine the applicable standard for the data, in accordance with operating methods, practices and standards in effect. Qwest shall exercise reasonable efforts to provide accurate and complete LIDB information in Qwest's LIDB.

#### 9.15.3.3 Rate Elements - LIDB Query Service

9.15.3.3.1 The recurring charges for LIDB queries for Alternately Billed Services (ABS) calls processed by an Operator Services Switch are contained in Exhibit A of this Agreement.

9.15.3.3.2 LIDB Query rates apply in addition to all applicable CCSAC charges.

#### 9.15.3.4 Ordering - LIDB Inquiry Service

9.15.3.4.1 LIDB requires a connection to the Common Channel Signaling Network (CCSN). Therefore, CLEC must have Common Channel Signaling Access Capability (CCSAC).

9.15.3.4.2 Provisioning of LIDB is done via the LIDB Access Request Form. Upon receipt of an accurate LIDB Access Request Form, Qwest will complete all necessary work and service will be available within seven (7) business days.

9.15.3.4.3 In addition to the LIDB Request Form, hub providers requesting LIDB services on behalf of CLEC must furnish Qwest a Proof of Authorization to prove that they have CLEC authorization to provide these services. This letter must be on file prior to provisioning.

#### *9.15.4 Fraud Alert Notification*

##### **9.15.4.1 Description - Fraud Alert Notification**

The Watch Dog Fraud Management System (FMS) processes the LIDB query detail records to establish patterns and identify potential fraudulent situations. Watch Dog issues an alert to the Qwest Fraud Investigation Unit (FIU). Qwest will notify CLEC of system alerts on CLEC end user lines.

##### **9.15.4.2 Terms and Conditions - Fraud Alert Notification**

Qwest will notify CLEC of system alerts on CLEC end user lines. At the direction of CLEC, Qwest will institute a block to prevent any further occurrence of fraud or uncollectible toll charges in accordance with practices used by Qwest for its own end users. Such practices include, but are not limited to, removing from valid data those data which incur fraud or uncollectible toll charges.

##### **9.15.4.3 Rate Elements - Fraud Alert Notification**

Fraud Alert Notification will be billed on a time and material basis per alert.

##### **9.15.4.4 Ordering - Fraud Alert Notification**

As part of the planning for LIDB Data Storage, CLEC will provide Qwest a contact for fraud notification. The contact must be available 24 hours a day, 7 days a week. Qwest will not take any action when fraud notification is received other than to notify CLEC. CLEC may request that Qwest deny a calling card. Any request of this type must be followed up by a fax as a confirmation.

#### **9.16 8XX Database Query Service**

9.16.1 8XX Database Query Service is an originating service which provides the Carrier Identification Code (CIC) and/or the vertical features associated with the 8XX number. Call routing information in the SMS/800 Database reflects the desires of the owner of the 8XX number as entered in the SMS/800 by its chosen responsible organization.

### *9.16.2 8XX Optional Features*

9.16.2.1 POTS Translation - Delivers the ten-digit Plain Old Telephone Service (POTS) number to CLEC. To determine that the call originated as an 8XX number, the trunk group must be provisioned with Automatic Number Identification (ANI). ANI digit 24 will be delivered to the trunk group.

9.16.2.2 Call Handling and Destination Features - This will allow routing options by specifying a single carrier, multiple carriers, single termination or multiple terminations. Multiple terminations may require the POTS translation feature. Variable routing options are:

- a) Routing by originating NPA-NXX-XXXX;
- b) Time of day;
- c) Day of week;
- d) Specified date; and
- e) Allocation by percentage.

### *9.16.3 Rate Elements*

9.16.3.1 The recurring charges for 8XX Database Query Service, POTS Translation, and Call Handling and Destination Features are contained in Exhibit A of this Agreement.

9.16.3.2 The rates for 8XX Database Query Service only apply to queries from CLEC's switch to the Qwest 8XX Database. If CLEC routes 8XX traffic to Qwest for delivery to an interexchange carrier, the call shall be handled as jointly provided switched access. If CLEC routes such traffic to Qwest without performing the query, Qwest shall perform the query in accordance with its switched access Tariff.

9.16.3.3 Non-recurring Options Activations Charge will apply for CLEC to activate 8XX Database Query Service. These rate elements are contained in the CCSAC/SS7 section of Exhibit A.

### *9.16.4 Ordering Process*

9.16.4.1 CLEC shall order access to Qwest local STP (links and ports) prior to or in conjunction with 8XX Database Query Service.

9.16.4.2 The information and time intervals to order STP (links and ports) are contained in the Common Channel Signaling Capability/SS7 Section of this Agreement. STP links and ports are required with 8XX Database Query Service.

9.16.4.3 8XX Database Query Service shall be provided within thirty (30) days after CLEC has access to the Qwest local STP.

### *9.16.5 Technical Requirements*

9.16.5.1 Qwest shall make Qwest's Toll Free Number Database available, through its STPs, for CLEC to query from CLEC's designated switch.

9.16.5.2 The Toll Free Number Database shall return carrier identification and, where applicable, the queried toll free number, translated numbers and instructions as it would in response to a query from a Qwest switch.

### *9.16.6 Interface Requirements*

The signaling interface between CLEC's or other local switch and the Toll-Free Number Database shall use the TCAP protocol as specified in the technical references together with the signaling network interface.

### *9.16.7 Technical References*

SCPs/Databases shall be consistent with the following technical references:

9.16.7.1 GR-246-CORE, Bell Communications Research Specification of Signaling System Number 7, Issue 1 (Bellcore, December 1994);

9.16.7.2 GR-1432-CORE, CCS Network Interface Specification (CCSNIS) Supporting Signaling Connection Control Part (SCCP) and Transaction Capabilities Application Part (TCAP) (Bellcore, March 1994);

9.16.7.3 GR-954-CORE, CCS Network Interface Specification (CCSNIS) Supporting Line Information Database (LIDB) Service 6, Issue 1, Rev. 1 (Bellcore, October 1995);

9.16.7.4 GR-1149-CORE, OSSGR Section 10: System Interfaces, Issue 1 (Bellcore, October 1995) (Replaces TR-NWT-001149);

9.16.7.5 GR-1158-CORE, OSSGR Section 22.3: Line Information Database 6, Issue (Bellcore, October 1995); and

9.16.7.6 WGR-1428-CORE, CCS Network Interface Specification (CCSNIS) Supporting Toll Free Service (Bellcore, May 1995).

## **9.17 InterNetwork Calling Name (ICNAM)**

### *9.17.1 Description*

9.17.1.1 InterNetwork Calling Name (ICNAM) is a Qwest service that allows CLEC to query Qwest's ICNAM database and secure the listed name information for the requested telephone number (calling number), in order to deliver that information to CLEC's end users.

9.17.1.2 ICNAM database contains current listed name data by working telephone number served or administered by Qwest, including listed name data provided by other

Telecommunications Carriers participating in the Calling Name Delivery Service arrangement.

#### 9.17.2 Terms and Conditions

9.17.2.1 In response to queries properly received at Qwest's ICNAM database, Qwest will provide the listed name of the calling party that relates to the calling telephone number (when the information is actually available in Qwest's database and the delivery thereof is not blocked or otherwise limited by the calling party or other appropriate request). CLEC is responsible for properly and accurately launching and transmitting the query from its serving office to the Qwest database.

9.17.2.2 In response to proper signaling queries, Qwest will provide CLEC with ICNAM database end user information if the calling party's end user information is stored in the Qwest ICNAM database. As a result, the called party end user can identify the calling party listed name prior to receiving the call, except in those cases where the calling party end user has its ICNAM information blocked.

9.17.2.3 Qwest will allow CLEC to query Qwest's ICNAM database in order to obtain ICNAM information which identifies the calling party end user.

9.17.2.4 The ICNAM service shall include the database dip and transport from Qwest's regional STP to Qwest's SCP where the database is located. Transport from CLEC's network to Qwest's local STP is provided via Links, which are described and priced in the CCSAC/SS7 Section of this Agreement.

9.17.2.5 CLEC shall send queries conforming to the American National Standards Institute's (ANSI) approved standards for SS7 protocol and per the following specification standard documents:

- a) Bellcore-SS7 Specification, TR-NPL-000246;
- b) ANSI-SS7 Specifications;
- c) Message Transfer Part T1.111;
- d) Signaling Connection Control Part T1.112;
- e) Transaction Capabilities Application Part T1.114;
- f) Bellcore-CLASS Calling Name Delivery;
- g) Generic Requirements, TR-NWT-001188; and
- h) Bellcore-CCS Network Interface Specifications, TR-TSV-000905.

9.17.2.6 CLEC acknowledges that transmission in the above protocol is necessary for Qwest to provision its ICNAM services. CLEC will adhere to other applicable standards, which include Telcordia specifications defining service applications, message types and formats. Qwest may modify its network pursuant to other specification standards that may become necessary to meet the prevailing demands within the United

States telecommunications industry. All such changes shall be announced in advance and coordinated with CLEC.

9.17.2.7 All queries to Qwest's ICNAM database shall use a subsystem number (the designation of application) value of 250 with a translation type value of 5. CLEC acknowledges that such subsystem number and translation type values are necessary for Qwest to properly process queries to Qwest's ICNAM database.

9.17.2.8 CLEC acknowledges and agrees that SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of Qwest's SS7 network. CLEC further agrees that Qwest, in its sole discretion, shall employ certain automatic and/or manual overload controls within the Qwest SS7 network to safeguard against any detrimental effects. Qwest shall report to CLEC any instances where overload controls are invoked due to CLEC's SS7 network, and CLEC agrees in such cases to take immediate corrective actions as necessary to cure the conditions causing the overload situation.

9.17.2.9 Qwest shall exercise reasonable efforts to provide accurate and complete ICNAM information in Qwest's ICNAM database. The ICNAM information is provided on an as-is Basis with all faults. Qwest does not warrant or guarantee the correctness or the completeness of such information; however, Qwest will access the same ICNAM database for CLEC's queries as Qwest accesses for its own queries. In no event shall Qwest have any liability for system outage or inaccessibility or for losses arising from the authorized use of the ICNAM data by CLEC.

9.17.2.10 CLEC shall arrange its Calling Party Number based services in such a manner that when a calling party requests privacy, CLEC will not reveal that caller's name or number to the called party (CLEC's end user). CLEC will comply with all FCC guidelines and, if applicable, the appropriate Commission rules, with regard to honoring the privacy indicator.

9.17.2.11 Qwest retains full and complete ownership and control over the ICNAM database and all information in its database. CLEC agrees not to copy, store, maintain or create any table or database of any kind from any response received after initiating an ICNAM query to Qwest's database. CLEC will prohibit its end users from copying, storing, maintaining, or creating any table or database of any kind from any response provided by CLEC to its end user after CLEC initiated an ICNAM query to Qwest's ICNAM database.

9.17.2.12 Qwest reserves the right to temporarily discontinue the ICNAM service if CLEC's incoming calls are so excessive as determined by Qwest to jeopardize the viability of the ICNAM service.

### *9.17.3 Rate Elements*

Rate elements for ICNAM services are contained in Exhibit A of this Agreement.

### *9.17.4 Billing*

9.17.4.1 CLEC agrees to pay Qwest for each and every query initiated into

Qwest's ICNAM database for any information, whether or not any information is actually provided.

9.17.4.2 ICNAM rates will be billed to CLEC monthly by Qwest for the previous month.

#### *9.17.5 Ordering Process*

9.17.5.1 CLEC shall order access to Qwest local STP (links and ports) prior to or in conjunction with ICNAM Services. Section 9.13 contains information on ordering SS7 and STP links and ports.

9.17.5.2 If CLEC has an existing database of names that needs to be compiled into the appropriate format, ICNAM service will begin 30 days after Qwest has received from CLEC its database information.

9.17.5.3 If CLEC has no existing end-user base, then ICNAM service will begin seven (7) days after Qwest receives the CLEC order.

### **10.3 911/E911 Service**

#### *10.3.1 Description*

10.3.1.1 911 and E911 provides an end user access to the applicable emergency service bureau, where available, by dialing a 3-digit universal telephone number (911).

10.3.1.2 Automatic Location Identification/Data Management System (ALI/DMS). The ALI/DMS database contains end user information (including name, address, telephone number, and sometimes special information from the local service provider or end user) used to determine to which Public Safety Answering Point (PSAP) to route the call. The ALI/DMS database is used to provide more routing flexibility for E911 calls than Basic 911.

10.3.1.3 Basic 911 directly connects to the PSAP all 911 calls from one or more local exchange switches that serve a geographic area. E911 provides additional selective routing flexibility for 911 calls. E911 uses end user data, contained in the ALI/DMS, to determine to which Public Safety Answering Point (PSAP) to route the call.

#### *10.3.2 Terms and Conditions*

10.3.2.1 E911 functions provided to CLEC shall be at the same level of accuracy and reliability as for such support and services that Qwest provides to its end users for such similar functionality.

10.3.2.2 In counties where Qwest has obligations under existing agreements as the primary provider of the 911 system to the county, CLEC will participate in the provision of the 911 System as described in Section 10.3.



10.3.2.3 Qwest shall conform to all state regulations concerning emergency services.

10.3.2.4 Qwest shall route E911 calls to the appropriate PSAP.

10.3.2.5 Each Party will be responsible for those portions of the 911 system for which it has total control, including any necessary maintenance to each Party's portion of the 911 system.

10.3.2.6 Qwest will provide CLEC with the identification of the Qwest 911 controlling office that serves each geographic area served by CLEC.

10.3.2.7 Qwest will provide CLEC with the ten-digit telephone numbers of each PSAP agency, for which Qwest provides the 911 function, to be used by CLEC to acquire emergency telephone numbers for operators to handle emergency calls in those instances where CLEC's end user dials "0" instead of "911". It shall be the responsibility of CLEC to verify or confirm the appropriate use of the contact information provided by Qwest with each PSAP prior to offering 911 calls or publication of such data.

10.3.2.8 If a third party is the primary service provider to a county, CLEC will negotiate separately with such third party with regard to the provision of 911 service to the county. All relations between such third party and CLEC are separate from this Agreement and Qwest makes no representations on behalf of the third party.

10.3.2.9 If CLEC is the primary service provider to the county, CLEC and Qwest will negotiate the specific provisions necessary for providing 911 service to the county and will include such provisions in an amendment to this Agreement.

10.3.2.10 CLEC will separately negotiate with each county regarding the collection and reimbursement to the county of applicable end user taxes for 911 service.

10.3.2.11 CLEC is responsible for network management of its network components in compliance with the Network Reliability Council Recommendations and meeting the network standard of Qwest for the 911 call delivery.

10.3.2.12 The Parties shall provide a single point of contact to coordinate all activities under this Agreement.

10.3.2.13 Neither Party will reimburse the other for any expenses incurred in the provision of E911 services. All costs incurred by the Parties for 911/E911 services shall be billed to the appropriate PSAP.

10.3.2.14 Qwest's designated E911 database provider, an independent third party, will be responsible for maintaining the E911 database. CLEC shall have non-discriminatory unbundled access to the E911 database, including the listings of other LECs for purposes of providing 911 services related to the public health, safety and welfare.

### 10.3.3 E911 Database Updates

10.3.3.1 CLEC exchanges to be included in Qwest's E911 Database will be indicated via written notice to the appropriate 911 authority (state agency or PSAP administrator) and will not require an amendment to this Agreement.

10.3.3.2 Qwest's designated E911 database provider, an independent third party, will be responsible for maintaining the E911 database. Qwest, or its designated database provider, will provide to CLEC an initial copy of the most recent Master Street Address Guide ("MSAG"), and subsequent versions on a quarterly basis, at no charge. MSAGs provided outside the quarterly schedule will be provided and charged on an individual case basis. The data will be provided in computer readable format. Qwest shall provide CLEC access to the Master Street and Address Guide at a level of accuracy and reliability that is equivalent to the access Qwest provides to itself.

#### *10.3.4 E911 Database Updates for Facilities-Based CLECs*

10.3.4.1 Qwest will ensure that the 911 database entries for CLEC will be maintained with the same accuracy and reliability that Qwest maintains for Qwest's own end-users.

10.3.4.2 For selective routing table updates, facilities-based CLECs will negotiate directly with Qwest's database provider for the input and validation of end user data into the Qwest Automatic Location Identification ("ALI") database. CLEC will negotiate directly with the PSAP (or PSAP agency's) DMS/ALI provider for input of end user data into the ALI database. In most cases the selective routing table updates and the ALI database will be managed by the same provider. CLEC assumes all responsibility for the accuracy of the data that CLEC provides for MSAG preparation and E911 Database operation.

10.3.4.3 If it is facilities-based, CLEC will provide end user data to Qwest's agent for the Qwest ALI database utilizing NENA-02-001 Recommended Formats For Data Exchange, NENA-02-002 Recommended Standard For Street Thoroughfare Abbreviations and NENA-02-003 Recommended Protocols For Data Exchange. Qwest will furnish CLEC any variations to NENA recommendations required for ALI database input.

10.3.4.4 If it is facilities-based, CLEC will provide end user data to Qwest's database provider for Qwest's ALI database that is MSAG valid and meets all components of the NENA-02-004 Recommended Measurements For Data Quality.

10.3.4.5 If it is facilities-based, CLEC will update its end user records provided to Qwest's database provider for Qwest's ALI database to agree with the 911 MSAG standards for its service areas.

#### *10.3.5 E911 Database Updates for Resale Based CLECs*

10.3.5.1 For resold services, Qwest, or its designated database provider, will provide updates to the ALI database in a manner that is at the same level of accuracy and reliability as such updates are provided for Qwest's end-users. For resold accounts,

CLEC shall provide Qwest with accurate end-user location information to be updated to the ALI/DMS database. Qwest shall use its current process to update and maintain end user information in the ALI/DMS database.

#### *10.3.6 E911 Database Accuracy*

10.3.6.1 E911 Database accuracy shall be measured jointly by the PSAPs and Qwest's database provider in a format supplied by Qwest. The reports shall be forwarded to CLEC by Qwest's database provider when relevant and will indicate incidents when incorrect or no ALI data is displayed. The reports provided to CLEC shall contain CLEC-specific information regarding CLEC's accounts.

10.3.6.2 Each discrepancy report will be jointly researched by Qwest and CLEC. Corrective action will be taken immediately by the responsible Party.

10.3.6.3 Each Party providing updates to the E911 database will be responsible for the accuracy of its end user records. Each Party providing updates specifically agrees to indemnify and hold harmless the other Party from any claims, damages, or suits related to the accuracy of end user data provided for inclusion in the E911 Database.

10.3.6.4 Qwest and its vendor will provide non-discriminatory error correction for records submitted to the Automatic Location Identification (ALI) database. For resold accounts, if vendor detects errors, it will attempt to correct them. If vendor is unable to correct the error, vendor will contact Qwest for error resolution. For errors referred to Qwest, Qwest will provide the corrections in a non-discriminatory manner. If Qwest is unable to resolve the error, Qwest will contact the Resale-CLEC for resolution. In the case of facility-based CLECs, the vendor will interface directly with the CLEC to resolve record errors.

#### *10.3.7 E911 Interconnection*

10.3.7.1 If required by CLEC, Qwest shall interconnect direct trunks from CLEC's network to the Basic 911 PSAP, or the E911 tandem. Such trunks may alternatively be provided by CLEC. If provided by Qwest, such trunks will be provided on a non-discriminatory basis. Qwest shall provide special protection identification for CLEC 911 circuits in the same manner as Qwest provides for its 911 circuits.

10.3.7.1.1 The Parties shall establish a minimum of two (2) dedicated trunks from CLEC's Central Office to each Qwest 911/E911 selective router (i.e., 911 Tandem Office) that serves the areas in which CLEC provides Exchange Service, for the provision of 911/E911 services and for access to all subtending PSAPs ("911 Interconnection Trunk Groups"). CLEC can order diverse routing for 911/E911 circuits, if facilities are available. When Qwest facilities are available, Qwest will comply with diversity of facilities and systems as ordered by CLEC. Where there is alternate routing of 911/E911 calls to a PSAP in the event of failures, Qwest shall make that alternate routing available to CLEC.

10.3.7.1.2 911 Interconnection Trunk Groups must be, at a minimum, DS-0 level trunks configured as a 2-wire analog interface or as part of a digital (1.544

Mbps) interface. Either configuration must use Centralized Automatic Message Accounting ("CAMA") type signaling with MF tones that will deliver Automatic Number Identification "ANI" with the voice portion of the call, or Signaling System 7 ("SS7") if available (i.e., other signaling technology as available). All 911 Interconnection trunk groups must be capable of transmitting and receiving Baudot code necessary to support the use of Telecommunications Devices for the Deaf ("TTY/TDDs").

10.3.7.1.3 Qwest shall begin restoration of 911/E911 trunking facilities immediately upon notification of failure or outage. Qwest must provide priority restoration of trunks or network outages on the same terms and conditions it provides itself. CLEC will be responsible for the isolation, coordination, and restoration of all 911 network maintenance problems to the CLEC demarcation. Qwest will be responsible for the coordination and restoration of all 911 network maintenance problems beyond the demarcation. Qwest repair service includes testing and diagnostic service from a remote location, dispatch of or in-person visit(s) of personnel. Where an on-site technician is determined to be required, a technician will be dispatched without delay. CLEC is responsible for advising Qwest of the circuit identification when notifying Qwest of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. Qwest will refer network trouble to CLEC if no defect is found in Qwest's network. The Parties agree that 911 network problem resolution will be managed in an expeditious manner at all times.

10.3.7.2 For CLEC-identified 911 trunk blockages, Qwest agrees to take corrective action using the same trunking service procedures used for Qwest's own E911 trunk groups.

10.3.7.3 The Parties will cooperate in the routing of 911 traffic in those instances where the ALI/ANI information is not available on a particular 911 call.

10.3.7.4 For a facility-based CLEC, Qwest shall provide 911 Interconnection, including the provision of dedicated trunks from CLEC end office switch to the 911 control office, at parity with what Qwest provides itself.

10.3.7.5 For a reseller CLEC, or a CLEC using unbundled switching, Qwest shall provide CLEC with access to the same 911 trunks used for Qwest's retail end-users which extend from the Qwest end office switch to the Basic 911 PSAP or the E911 tandem. CLEC access to such 911 trunks shall be on a shared, non-discriminatory basis.

### *10.3.8 E911 and Number Portability*

10.3.8.1 When a Qwest telephone number is ported out, the receiving CLEC shall be responsible to update the ALI/DMS database. When a CLEC telephone number is ported in, Qwest shall be responsible to update the ALI/DMS database.

10.3.8.2 When Remote Call Forwarding (RCF) is used to provide number portability to the end user and a remark or other appropriate field information is available

in the database, the shadow or “forwarded-to” number and an indication that the number is ported shall be added to the end user record by CLEC.

## **10.4 White Pages Directory Listings**

### *10.4.1 Description*

White Pages Listings Service (Listings) consists of Qwest placing the names, addresses and telephone numbers of CLEC’s end users in Qwest’s listing database, based on end user information provided to Qwest by CLEC. Qwest is authorized to use CLEC end user listings as noted below.

### *10.4.2 Terms and Conditions*

10.4.2.1 CLEC will provide in standard format, by mechanized or by manual transmission to Qwest, its primary, premium, and privacy listings. Qwest will accept one primary listing for each main telephone number belonging to CLEC’s end users at no charge.

10.4.2.2 CLEC will be charged for premium and privacy listings (e.g., additional, foreign, cross reference) at Qwest’s General Exchange listing Tariff rates, less the wholesale discount, as described in Exhibit A. Primary listings and other types of listings are defined in the Qwest General Exchange Tariffs.

10.4.2.3 Information on submitting and updating listings is available in “Qwest Facility Based and Co-Provider Listings User Documents.” Qwest will furnish CLEC the listings format specifications. Directory publishing schedules and deadlines will be provided to CLEC.

10.4.2.4 If CLEC provides its end users’ listings to Qwest, CLEC grants Qwest access to CLEC’s end user listings information solely for use in its Directory Assistance List Service, except as provided in Section 10.4.2.5, and subject to the terms and conditions of this Agreement. Qwest will incorporate CLEC’s end user listings into the Directory Assistance Database. Qwest will incorporate CLEC’s end user listings information in all existing and future Directory Assistance applications developed by Qwest. Should Qwest cease to be a telecommunications carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.

10.4.2.5 CLEC end user listings will be treated the same as Qwest’s end user listings. Prior written authorization from CLEC, which authorization may be withheld, shall be required for Qwest to sell, make available, or release CLEC’s end user listings to directory publishers, or other third parties other than Directory Assistance providers. No prior authorization from CLEC shall be required for Qwest to sell, make available, or release CLEC’s end user Directory Assistance listings to Directory Assistance providers. Listings shall not be provided or sold in such a manner as to segregate end users by carrier. Qwest will not charge CLEC for updating and maintaining Qwest’s listings databases. CLEC will not receive compensation from Qwest for any sale of listings by Qwest as provided for under this Agreement.

10.4.2.6 To the extent that state Tariffs limit Qwest's liability with regard to listings, the applicable state Tariff(s) is incorporated herein and supersedes the Limitation of Liability section of this Agreement with respect to listings only.

10.4.2.7 Qwest is responsible for maintaining listings, including entering, changing, correcting, rearranging and removing listings in accordance with CLEC orders.

10.4.2.8 Qwest provides nondiscriminatory appearance and integration of white pages listings for all CLEC's and Qwest's end users. All requests for white pages directory listings, whether CLEC or Qwest end users, follow the same processes for entry into the listings database.

10.4.2.9 Qwest will take reasonable steps in accordance with industry practices to accommodate nonpublished and nonlisted listings provided that CLEC has supplied Qwest the necessary privacy indicators on such listings.

10.4.2.10 CLEC white pages listings will be in the same font and size as listings for Qwest end-users, and will not be separately classified.

10.4.2.11 Qwest processes for publication of white pages directory listings will make no distinction between CLEC and Qwest subscribers. CLEC listings will be provided with the same accuracy and reliability as Qwest's end user listings. Qwest will ensure CLEC listings provided to Qwest are included in the white pages directory published on Qwest's behalf using the same methods and procedures, and under the same terms and conditions, as Qwest uses for its own end user listings.

10.4.2.12 Qwest shall ensure its third party publisher distributes appropriate alphabetical and classified directories (white and yellow pages) and recycling services to CLEC end-users at parity with Qwest end users, including providing directories a) upon establishment of new service; b) during annual mass distribution; and c) upon end-user request.

10.4.2.13 CLEC shall use commercially reasonable efforts to ensure that listings provided to Qwest are accurate and complete. All third party listings information is provided AS IS, WITH ALL FAULTS. CLEC further represents that it shall review all listings information provided to Qwest, including end user requested restrictions on use, such as nonpublished and nonlisted restrictions.

10.4.2.14 Reserved for Future Use.

10.4.2.15 CLEC shall be solely responsible for knowing and adhering to state laws or rulings regarding listings and for supplying Qwest with the applicable listing information.

10.4.2.16 CLEC agrees to provide to Qwest its end user names, addresses and telephone numbers in a standard mechanized format, as specified by Qwest.

10.4.2.17 CLEC will supply its ACNA/CIC or CLCC/OCN, as appropriate, with each order to provide Qwest the means of identifying listings ownership.

10.4.2.18 Prior to placing listings orders on behalf of end users, CLEC shall be

responsible for obtaining and have in its possession Proof of Authorization ("POA"), as set forth in Section 5.3 of this Agreement.

10.4.2.19 Qwest will provide monthly listing verification proofs that provide the data to be displayed in the published white pages directory and available on directory assistance. Verification proofs containing nonpublished and nonlisted listings are also available upon request on the same monthly schedule.

10.4.2.20 Qwest will provide CLEC a reasonable opportunity to verify the accuracy of the listings to be included in the white pages directory and directory assistance.

10.4.2.21 CLEC may review and if necessary edit the white page listings prior to the close date for publication in the directory.

10.4.2.22 CLEC is responsible for all dealings with, and on behalf of, CLEC's end users, including:

10.4.2.22.1 All end user account activity (e.g., end user queries and complaints);

10.4.2.22.2 All account maintenance activity (e.g., additions, changes, issuance of orders for listings to Qwest);

10.4.2.22.3 Determining privacy requirements and accurately coding the privacy indicators for CLEC's end user information (if end user information provided by CLEC to Qwest does not contain a privacy indicator, no privacy restrictions will apply); and

10.4.2.22.4 Any additional services requested by CLEC's end users.

10.4.2.23 Pursuant to Sec. 222 (a), (b), (c), (d), and (e) of the Telecommunications Act, Qwest will provide subscriber list information gathered in Qwest's capacity as a provider of local exchange service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms and conditions to CLEC upon request for the purpose of publishing directories in any format. Rates may be subject to federal or state laws or rules, as appropriate. Upon request by CLEC, Qwest shall enter into negotiations with CLEC for CLEC's use of subscriber list information for purposes other than publishing directories, and Qwest and CLEC will enter into a written contract if agreement is reached for such use.

10.4.2.23.1 Qwest shall use commercially reasonable efforts to ensure that its retail end user listings provided to CLEC are accurate and complete. Any third party listings are provided AS IS, WITH ALL FAULTS. Qwest further represents that it shall review all its retail end user listings information provided to CLEC including end-user requested restrictions on use, such as nonpublished and nonlisted restrictions.

10.4.2.24 Qwest represents and warrants that any arrangement for the publication of white pages directory listings with an affiliate (including, without limitation, Qwest Dex, Inc.) (an "Affiliate"), requires such Affiliate to publish the directory listings of CLEC

contained in Qwest's listings database so that CLEC's directory listings are non-discriminatory in appearance and integration, and have the same accuracy and reliability that such Affiliate provides to Qwest's end users.

10.4.2.25 Qwest further agrees that any arrangements for the publication of white pages directory listings with an Affiliate shall require such Affiliate to include in the customer guide pages of the white pages directory, a notice that end users should contact their local service provider to request any modifications to their existing listing or to request a new listing.

10.4.2.26 Qwest agrees that any arrangement with an Affiliate for the publication of white pages directory listings shall require such Affiliate to provide CLEC space in the customer guide pages of the white pages directory for the purpose of notifying customers how to reach CLEC to: (1) request service; (2) contact repair service; (3) dial directory assistance; (4) reach an account representative; (5) request buried cable local service; and (6) contact the special needs center for customers with disabilities.

### *10.4.3 Rate Elements*

The following rate elements apply to White Pages Listings and are contained in Exhibit A of this Agreement.

10.4.3.1 Primary Listings; and

10.4.3.2 Premium/Privacy Listings.

### *10.4.4 Ordering Process*

10.4.4.1 Qwest provides training on white page listings requests and submission processes. The ordering process is similar to the service ordering process.

10.4.4.2 CLEC listings can be submitted for inclusion in Qwest white pages directories according to the directions in the Qwest Listings User Documents for Facility-Based and Reseller CLECs, which is available on-line through the Interconnect and Resale Resource Guide, (<http://www.uswest.com/wholesale/> or will be provided in hard copy to CLEC upon request. Initial information and directions are available in the Interconnect and Resale Resource Guide.

10.4.4.3 CLEC can submit the OBF forms incorporated in the Local Service Request via the IMA-EDI, IMA-GUI, or fax.

## **10.5 Directory Assistance**

### *10.5.1 Description*

10.5.1.1 Directory assistance service is a telephone number, voice information service that Qwest provides to its own end users and to other telecommunications carriers. Qwest provides CLEC non-discriminatory access to Qwest's Directory Assistance centers, services and Directory Assistance Databases. There are three



forms of Directory Assistance Services available pursuant to this Agreement -- Directory Assistance Service, Directory Assistance List Services, and Directory Assistance Database Service. These services are available with CLEC-specific branding, generic branding and Directory Assistance Call Completion Link options.

10.5.1.1.1 Directory Assistance Service - - The published and non-listed telephone numbers provided within the relevant geographic area are those contained in Qwest's then current Directory Assistance database.

10.5.1.1.1.1 Local Directory Assistance Service -- Allows CLEC's end users to receive published and non-listed telephone numbers within the caller's NPA/LATA geographic areas, whichever is greater.

10.5.1.1.1.2 National Directory Assistance Service -- Allows CLEC's end users to receive listings from Qwest's Local Directory Assistance database and from the database of the National Directory Assistance services vendor selected by Qwest. National Directory Assistance Service includes Local Directory Assistance Service.

10.5.1.1.1.3 Call Branding Service -- Allows CLEC's end users to receive the service options listed in 10.5.1.1.1.1 and 10.5.1.1.1.2 branded with the brand of CLEC, where technically feasible or with a generic brand. Call Branding announces CLEC's name to CLEC's end user at the start and completion of the call. Call Branding is an optional service available to CLEC.

a) Front End Brand -- Announces CLEC's name to CLEC's end user at the start of the call. There is a nonrecurring charge to setup and record the Front End Brand message.

b) Back End Brand -- Announces CLEC's name to CLEC's end user at the completion of the call. There is a nonrecurring charge to setup and record the Back End Brand message.

c) There is a non-recurring charge to load CLEC's branded message in each switch.

d) Qwest will record the CLEC's branded message.

10.5.1.1.1.4 Call Completion Link allows the CLEC's end users' calls to be returned to the CLEC for completion on the CLEC's network, where available. There is a recurring charge per call.

10.5.1.1.2 Directory Assistance List Service -- Directory Assistance List Service is the access to Qwest's directory listings for subscribers within Qwest's fourteen (14) states for the purpose of providing Directory Assistance Service to its local exchange end user customers subject to the terms and conditions of this Agreement. See Section 10.6 for terms and conditions relating to the Directory Assistance List Services.

10.5.1.1.2.1 If CLEC elects to build its own Directory Assistance service, it can obtain Qwest directory listings through the purchase of the Directory Assistance List.

10.5.1.1.3 Directory Assistance Database Service -- Qwest shall provide CLEC non-discriminatory access to Qwest's Directory Assistance Database or "Directory" database, where technically feasible, on a "per dip" basis.

## *10.5.2 Terms and Conditions*

10.5.2.1 Qwest will provide CLEC non-discriminatory access to Qwest's Directory Assistance Databases, Directory Assistance centers and personnel to provide Directory Assistance service.

10.5.2.2 Qwest's Directory Assistance database contains only those published and non-listed telephone number listings obtained by Qwest from its own end users and other Telecommunications Carriers.

10.5.2.3 Qwest will provide access to Directory Assistance Service for facility-based CLECs via dedicated multi-frequency (MF) operator service trunks. CLEC may purchase operator service trunks from Qwest or provide them itself. These operator service trunks will be connected directly to a Qwest Directory Assistance host or remote switch. CLEC will be required to order or provide at least one operator services trunk for each NPA served.

10.5.2.4 Qwest will perform Directory Assistance Services for CLEC in accordance with operating methods, practices, and standards in effect for all Qwest end users. Qwest will provide the same priority of handling for CLEC's end user calls to Qwest's Directory Assistance service as it provides for its own end user calls. Calls to Qwest's Directory Assistance are handled on a first come, first served basis, without regard to whether calls are originated by CLEC or Qwest end users.

10.5.2.5 Call Branding for Directory Assistance will entail recording and setting up a brand message. Dedicated interoffice facilities are required.

10.5.2.6 Call Completion Link requires dedicated interoffice facilities.

10.5.2.7 If CLEC elects to access the Qwest Directory Assistance databases on a per dip basis, Qwest will provide to CLEC the facility and equipment specifications necessary to enable CLEC to obtain compatible facilities and equipment.

10.5.2.8 A reseller CLECs' end user customers may use the same dialing pattern to access Directory Assistance service as used by Qwest's end user customers (i.e., 411, 1+411, or 1+NPA+555-1212).

10.5.2.9 A facility-based CLEC may choose to have its end-users dial a unique number or use the same dialing pattern as Qwest end users to access Qwest Directory Assistance operators.

10.5.2.10 Qwest will timely enter into its Directory Assistance database updates of CLEC's listings. Qwest will implement quality assurance procedures such as random

testing for listing accuracy. Qwest will identify itself to end users calling its DA service provided for itself either by company name or operating company name or operating company number so that end users have a means to identify with whom they are dealing.

10.5.2.10.1 In accordance with Section 18, CLEC may request a comprehensive Audit of Qwest's use of CLEC's Directory Assistance listings. In addition to the terms specified in Section 18, the following also apply: as used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the Directory Assistance listings provided hereunder and such other Party's performance of its obligations under this Agreement. CLEC may perform up to two (2) Audits per 12-month period commencing with the effective date of this Agreement of Qwest's use of CLEC's Directory Assistance listings in Qwest's Directory Assistance service. CLEC shall be entitled to "seed" or specially code some or all of the Directory Assistance listings that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in this Agreement.

10.5.2.11 Qwest shall use CLEC's Directory Assistance listings supplied to Qwest by CLEC under the terms of this Agreement solely for the purposes of providing Directory Assistance Service and for providing Directory Assistance List Information to Directory Assistance providers.

10.5.2.12 At least ninety (90) days prior to using Qwest's Directory Assistance services, CLEC will provide a written forecast of its expected volume of Directory Assistance service calls. Should CLEC plan to substantially increase or decrease its actual usage as forecast by more than twenty-five percent (25%) of originally forecast usage, CLEC will give Qwest advance written notice of such planned change at least sixty (60) days prior to implementing such changed use. CLEC will update its forecasts of Directory Assistance service use, in writing annually, at least sixty (60) days prior to the anniversary date of its first forecast.

### *10.5.3 Rate Elements*

The following rate elements apply to Directory Assistance service and are contained in Exhibit A of this Agreement.

10.5.3.1 A per call rate is applicable for Local Directory Assistance and National Directory Assistance Service selected by CLEC.

10.5.3.2 A non-recurring setup and recording fee will be charged for establishing each Call Branding option. A nonrecurring charge to load the CLEC's brand in each switch is also applicable. Such non-recurring fees must be paid before service commences.

10.5.3.3 A per call rate is applicable for Call Completion Link.

#### *10.5.4 Ordering Process*

CLEC will order Directory Assistance Service by completing the questionnaire entitled "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers." This questionnaire may be obtained from CLEC's Qwest account manager.

#### *10.5.5 Billing*

10.5.5.1 Qwest will track and bill CLEC for the number of calls placed to Qwest's Directory Assistance service by CLEC's end users as well as for the number of requests for Call Completion Link.

10.5.5.2 For purposes of determining when CLEC is obligated to pay the per call rate, the call shall be deemed made and CLEC shall be obligated to pay when the call is received by the Operator Services switch. An end user may request and receive no more than two telephone numbers per Directory Assistance call. Qwest will not credit, rebate or waive the per call charge due to any failure to provide a telephone number.

10.5.5.3 Call Completion Link will be charged at the per call rate when the end user completes the required action (i.e., "press the number one," "stay on the line," etc.).

### **10.6 Directory Assistance List**

#### *10.6.1 Description*

10.6.1.1 Directory Assistance List (DA List) Information consists of name, address and telephone number information for all end users of Qwest and other LECs that are contained in Qwest's Directory Assistance Database and, where available, related elements required in the provision of Directory Assistance service to CLEC's end users. No prior authorization from CLEC shall be required for Qwest to sell, make available, or release CLEC's end user Directory Assistance listings to Directory Assistance providers. In the case of end users who have non-published listings, Qwest shall provide the end user's local numbering plan area ("NPA"), address, and an indicator to identify the non-published status of the listing to CLEC; however, Qwest will not provide the non-published telephone number.

10.6.1.2 Qwest will provide DA List Information via initial loads and daily updates either by means of a magnetic tape or Network Data Mover (NDM) or as otherwise mutually agreed upon by the Parties. Qwest will provide all changes, additions or deletions to the DA List Information overnight on a daily basis. The Parties will use a mutually agreed upon format for the data loads.

10.6.1.3 DA List Information shall specify whether the Qwest subscriber is a residential, business, or government subscriber, and the listings of other carriers will specify such information where it has been provided on the carrier's listing order.

10.6.1.4 In the event CLEC requires a reload of DA List Information from Qwest's database in order to validate, synchronize or reconcile its database, a reload will be made available according to the rate specified in Exhibit A.

10.6.1.5 Qwest and CLEC will cooperate in the designation of a location to which the data will be provided.

#### *10.6.2 Terms and Conditions*

10.6.2.1 Qwest grants to CLEC, as a competing provider of telephone exchange service and telephone toll service, access to the DA List Information solely for the purpose of providing Directory Assistance Service to its local exchange end user customers, or for other incidental use by other carrier's customers, or for other incidental use by other carrier's customers, subject to the terms and conditions of this Agreement. As it pertains to the DA List Information in this Agreement, "Directory Assistance Service" shall mean the provision, by CLEC via a live operator or a mechanized system, of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number. Should CLEC cease to be a telecommunications carrier, a competing provider of telephone exchange service or telephone toll service, this access grant automatically terminates.

10.6.2.1.1 Qwest shall make commercially reasonable efforts to ensure that listings of Qwest retail end users provided to CLEC in Qwest's DA List Information are accurate and complete. All third party DA List Information is provided AS IS, WITH ALL FAULTS. Qwest further represents that it shall review all of its end user listings information provided to CLEC, including end user requested restrictions on use, such as nonpublished and nonlisted restrictions.

10.6.2.2 CLEC will obtain and timely enter into its Directory Assistance database daily updates of the DA List Information, will implement quality assurance procedures such as random testing for Directory Assistance listing accuracy, and will identify itself to end-users calling its DA service either by company name or operating company number so that end-users have a means to identify with whom they are dealing.

10.6.2.3 CLEC shall use Qwest's Directory Assistance listings supplied to CLEC under the terms of this Agreement solely for the purposes of providing Directory Assistance Service.

10.6.2.4 Qwest shall retain all right, title, interest and ownership in and to the DA Listing Information it provides hereunder. CLEC acknowledges and understands that while it may disclose the names, addresses, and telephone numbers (or an indication of non-published status) of Qwest's end users to a third party calling its Directory Assistance for such information, the fact that such end user subscribes to Qwest's telecommunications services is confidential and proprietary information and shall not be disclosed to any third party.

10.6.2.5 CLEC shall not sublicense, copy or allow any third party to access, download, copy or use the DA List Information, or any portions thereof, or any information extracted therefrom. Each Party shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of Qwest's DA List Information at least equal to the measures it takes to protect its own confidential and

proprietary information, including but not limited to implementing adequate computer security measures to prevent unauthorized access to Qwest's DA List Information when contained in any database.

10.6.2.5.1 Unauthorized use of Qwest's DA List information, or any disclosure to a third party of the fact that an end user, whose listing is furnished in the DA list, subscribes to Qwest's, another Local Exchange Carrier's, Reseller's or CMRS's telecommunications services shall be considered a material breach of this Agreement and shall be resolved under the Dispute Resolution provisions of this Agreement.

10.6.2.6 Within five (5) days after the expiration or earlier termination of this Agreement, CLEC shall (a) return and cease using any and all DA List Information which it has in its possession or control, (b) extract and expunge any and all copies of such DA List Information, any portions thereof, and any and all information extracted therefrom, from its files and records, whether in print or electronic form or in any other media whatsoever, and (c) provide a written certification to Qwest from an officer that all of the foregoing actions have been completed. A copy of this certification may be provided to third party carriers if the certification pertains to such carriers' DA List Information contained in Qwest's database.

10.6.2.7 CLEC is responsible for ensuring that it has proper security measures in place to protect the privacy of the end user information contained within the DA List Information. CLEC must remove from its database any telephone number for an end user whose listing has become non-published when so notified by Qwest.

10.6.2.8 Audits -- In accordance with Section 18, Qwest may request a comprehensive Audit of CLEC's use of the DA List Information. In addition to the terms specified in Section 18, the following also apply:

10.6.2.8.1 As used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the DA List Information provided hereunder and such other Party's performance of its obligations under this Agreement. Either Party (the "Requesting Party") may perform up to two (2) Audits per 12-month period commencing with the effective date of this Agreement. Qwest shall be entitled to "seed" or specially code some or all of the DA List Information that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in Section 10.6.2.2 above.

10.6.2.8.2 All paper and electronic records will be subject to Audit.

10.6.2.9 CLEC recognizes that certain carriers who have provided DA List Information that is included in Qwest's database may be third party beneficiaries of this Agreement for purposes of enforcing any terms and conditions of the Agreement other than payment terms with respect to their DA List Information.

10.6.2.10 Qwest will provide a non-discriminatory process and procedure for contacting end users with non-published telephone numbers in emergency situations for non-published telephone numbers that are included in Qwest's Directory Assistance Database. Such process and procedure will be available to CLEC for CLEC's use when

CLEC provides its own Directory Assistance and purchases Qwest's Directory Assistance List product.

### *10.6.3 Rate Elements*

Recurring and non-recurring rate elements for DA List Information are described below and are contained in Exhibit A of this Agreement.

10.6.3.1 Initial Database Load -- A "snapshot" of data in the Qwest DA List Information database or portion of the database at the time the order is received.

10.6.3.2 Reload -- A "snapshot" of the data in the Qwest DA List Information database or portion of the database required in order to refresh the data in CLEC's database.

10.6.3.3 Daily Updates -- Daily change activity affecting DA List Information in the listings database.

10.6.3.4 One-Time Set-Up Fees -- Charges for special database loads.

10.6.3.5 Output Charges -- Media charges resulting from either the electronic transmission or tape delivery of the DA List Information, including any shipping costs.

### *10.6.4 Ordering*

10.6.4.1 CLEC may order the initial DA List Information load or update files for Qwest's local exchange service areas in its 14 state operating territory or, where technically feasible, CLEC may order the initial DA List Information load or update files by Qwest White Page Directory Code or NPA.

10.6.4.2 Special requests for data at specific geographic levels (such as NPA) must be negotiated in order to address data integrity issues.

10.6.4.3 CLEC shall use the Directory Assistance List Order Form found in the Interconnect & Resale Resource Guide.

## **10.7 Toll and Assistance Operator Services**

### *10.7.1 Description*

10.7.1.1 Toll and assistance operator services are a family of offerings that assist end users in completing EAS/local and long distance calls. Qwest provides non-discriminatory access to Qwest operator service centers, services and personnel.

10.7.1.1.1 Local Assistance. Assists CLEC end users requesting help or information on placing or completing EAS/local calls, connects CLEC end users to home NPA directory assistance, and provides other information and guidance,

including referral to the business office and repair, as may be consistent with Qwest's customary practice for providing end user assistance.

10.7.1.1.2 IntraLATA Toll Assistance. Qwest will direct CLEC's end user to contact its provider to complete InterLATA toll calls. Nothing in this Section is intended to obligate Qwest to provide any toll services to CLEC or CLEC's end users.

10.7.1.1.3 Emergency Assistance. Provide assistance for handling a CLEC end user's EAS/local and IntraLATA toll calls to emergency agencies, including but not limited to, police, sheriff, highway patrol and fire. CLEC is responsible for providing Qwest with the appropriate emergency agency numbers and updates.

10.7.1.1.4 Busy Line Verification ("BLV") is performed when a calling party requests assistance from the operator bureau to determine if the called line is in use. The operator will not complete the call for the calling party initiating the BLV inquiry. Only one BLV attempt will be made per call, and a charge shall apply.

10.7.1.1.5 Busy Line Interrupt ("BLI") is performed when a calling party requests assistance from the operator to interrupt a telephone call in progress. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will not connect the calling and called parties. The operator will make only one BLI attempt per call and the applicable charge applies whether or not the called party releases the line.

10.7.1.1.6 Quote Service – Provide time and charges to hotel/motel and other CLEC end users for guest/account identification.

#### *10.7.2 Terms and Conditions*

10.7.2.1 For facility-based CLECs, Interconnection to Qwest's Operator Services switch is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to the Qwest Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote Qwest Operator Services switch.

10.7.2.2 Trunk provisioning and facility ownership must follow Qwest guidelines.

10.7.2.3 In order for CLEC to use Qwest's operator services as a facility-based CLEC, CLEC must provide an operator service trunk between CLEC's end office and the Interconnection point on the Qwest operator services switch for each NPA served.

10.7.2.4 The technical requirements of operator service trunk are covered in the Operator Services Systems Generic Requirement (OSSGR), Bellcore document FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

10.7.2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.



10.7.2.6 CLEC will provide separate no-test trunks (not the local/IntraLATA trunks) to the Qwest BLV/BLI hub or to the Qwest Operator Services Switches.

10.7.2.7 Qwest will perform Operator Services in accordance with operating methods, practices, and standards in effect for all its end users. Qwest will respond to CLEC's end user calls to Qwest's operator services according to the same priority scheme as it responds to Qwest's end user calls. Calls to Qwest's operator services are handled on a first come, first served basis, without regard to whether calls are originated by CLEC or Qwest end users.

10.7.2.8 Qwest will provide operator services to CLEC where technically feasible and facilities are available. Qwest may from time-to-time modify and change the nature, extent, and detail of specific operator services available to its retail end users, and to the extent it does so, Qwest will provide forty-five (45) days' advance written notice to CLEC of such changes.

10.7.2.9 Qwest shall maintain adequate equipment and personnel to reasonably perform the Operator Services. CLEC shall provide and maintain the facilities necessary to connect its end users to the locations where Qwest provides the Operator Services and to provide all information and data needed or reasonably requested by Qwest in order to perform the Operator Services.

10.7.2.10 Call Branding is an optional service available to CLEC. Call Branding announces CLEC's name to CLEC's end user at the start of the call and at the completion of the call. If CLEC selects the Call Branding option, Qwest will provide Call Branding to CLEC where technically feasible.

a) Front End Brand – Announces CLEC's name to CLEC's end user at the start of the call. There is a nonrecurring charge to setup and record the Front End Brand message.

b) Back End Brand – Announces CLEC's name to CLEC's end user at the completion of the call. There is a nonrecurring charge to setup and record the Back End Brand message.

10.7.2.11 Call branding for toll and operator services will entail recording and setup of a brand message. Qwest will record the CLEC's branded message. Dedicated interoffice facilities will be required.

10.7.2.12 Call Branding also entails a nonrecurring charge to load CLEC's branded message in each switch.

10.7.2.13 CLEC's end-users may dial "0" or "0+" to access Qwest operator services. A facility-based CLEC may choose to have its end-users access Qwest operators by dialing a unique number or by using the same dialing pattern as Qwest end users.

10.7.2.14 At least ninety (90) days prior to using Qwest's operator services, CLEC will provide a written forecast of its expected volume of operator services calls. Should CLEC plan to substantially increase or decrease its actual usage as forecast by more than twenty-five

percent (25%) of originally forecast usage, CLEC will give Qwest advance written notice of such planned change at least sixty (60) days prior to implementing such changed use. CLEC will update its forecasts of operator services use, in writing annually, at least sixty (60) days prior to the anniversary date of its first forecast.

### *10.7.3 Rate Elements*

***Qwest toll and assistance operator services are offered under two pricing options. Option A offers a per message rate structure. Option B offers a work second and a per call structure. Applicable recurring and nonrecurring rate elements are detailed below and in Exhibit A of this Agreement.***

#### 10.7.3.1 Option A - Operator Services Rate Elements

10.7.3.1.1 Operator Handled Calling Card – For each completed calling card call that was dialed 0+ where the operator entered the calling card number.

10.7.3.1.2 Machine Handled Calling Card – For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.

10.7.3.1.3 Station Call – For each completed station call, including station sent paid, collect, third number special billing or 0- calling card call.

10.7.3.1.4 Person Call – For each completed person to person call regardless of the billing used by the end user.

10.7.3.1.5 Connect to Directory Assistance – For each operator placed call to directory assistance.

10.7.3.1.6 Busy Line Verify – For each call where the operator determines that conversation exists on a line.

10.7.3.1.7 Busy Line Interrupt – For each call where the operator interrupts conversation on a busy line and requests release of the line.

10.7.3.1.8 Operator Assistance – For each EAS/local call, whether completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator and no attempt is made to complete a call; and calls for quote service.

10.7.3.1.9 “Completed call” as used in this Section shall mean that the end user makes contact with the location, telephone number, person or extension designated by the end user.

### 10.7.3.2 Option B - Per Work Second and Computer Handled Calls

10.7.3.2.1 Operator Handled - CLEC will be charged per work second for all calls originating from its end users and facilities that are routed to Qwest's operator for handling. Work second charging begins when the Qwest operator position connects with CLEC's end user and terminates when the connection between the Qwest operator position and CLEC's end user is terminated.

10.7.3.2.2 Machine Handled - calls that are routed without operator intervention. Machine handled calls include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.

10.7.3.3 Call Branding Nonrecurring Charge. Qwest will charge to CLEC a nonrecurring setup and recording fee for establishing Call Branding and loading each switch with CLEC's branded message. CLEC must pay such non-recurring charges prior to commencement of the service. The non-recurring set-up and recording charge will apply each time the CLEC's brand message is changed. The non-recurring charge to load the switches with the CLEC's branded message will be assessed each time there is any change to the switch.

#### *10.7.4 Ordering Process*

CLEC will order Operator Services by completing the "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers." Copies of this questionnaire may be obtained from CLEC's designated Qwest account manager.

#### *10.7.5 Billing*

10.7.5.1 Qwest will track usage and bill CLEC for the calls placed by CLEC's end users and facilities.

10.7.5.2 Qwest will compute CLEC's invoice based on both Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls). Qwest will charge CLEC whichever option results in a lower charge.

10.7.5.3 If, due to equipment malfunction or other error, Qwest does not have available the necessary information to compile an accurate billing statement, Qwest may render a reasonably estimated bill, but shall notify CLEC of the methods of such estimate and cooperate in good faith with CLEC to establish a fair, equitable estimate. Qwest shall render a bill reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.

## **10.8 Access to Poles, Ducts, Conduits, and Rights of Way**

### *10.8.1 Description*

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, Qwest will provide CLEC with access to available pole attachment space for the placing of

facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term “pole attachment” means any attachment by a CLEC to a pole owned or controlled by Qwest.

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, Qwest will provide CLEC with access to available ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare duct/conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty duct/conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct.

10.8.1.2.1 The terms “duct” and “conduit” mean a single enclosed raceway for conductors, cable and/or wire. Duct and conduit may be in the ground, may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct and conduit may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser. The terms duct and conduit include riser conduit.

10.8.1.2.2 The term “innerduct” means a duct-like raceway smaller than a duct/conduit that is inserted into a duct/conduit so that the duct may typically carry three cables.

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, Qwest will provide to CLEC, via an Access Agreement in the form of Attachment 4 to Exhibit D, access to available ROW for the purpose of placing telecommunications facilities. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings. Within a multi-unit building, a ROW includes a pathway that is actually used or has been specifically designated for use by Qwest as part of its transmission and distribution network where the boundaries of the pathway are clearly defined either by written specifications or unambiguous physical demarcation.

10.8.1.5 The phrase “ownership or control to do so” means the legal right, as a matter of state law, to (i) convey an interest in real or personal property or (ii) to provide access to a third party and receive compensation for doing so.

### *10.8.2 Terms and Conditions*

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Duct/Innerduct Occupancy General Information Document, attached hereto as Exhibit D. Qwest will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on poles/duct/innerduct or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested poles/duct/innerduct/ROW route, including estimated distances between major points, the identification and location of the poles/duct/innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any poles/duct/innerduct or other facility for use by CLEC.

10.8.2.6 Qwest retains the right to determine the availability of space on poles/duct/innerduct, duct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on poles, innerduct, duct/conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready Fee"). When modifications to a Qwest spare duct/conduit include the placement of innerduct, Qwest or CLEC will install the number of innerduct required to fill the duct/conduit to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for duct/innerduct access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or poles/duct/innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4. CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 Replacement/Modification/Installation - If CLEC requests Qwest to replace or modify existing poles/duct/innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new poles/duct/innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced poles/duct/innerduct, if necessary. Ownership of new poles/duct/innerduct shall vest to Qwest.

10.8.2.10.1 Upon request, Qwest shall permit CLEC to install poles/duct/innerduct. Qwest reserves the right to reject any non-conforming replacement pole/duct/conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances.

10.8.2.10.2 To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all Parties including Qwest or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification.

10.8.2.10.3 The modifying party or Parties may recover a proportionate share of the modification costs from Parties that later are able to obtain access as a result of the modification. The proportionate share of the subsequent attacher will be reduced to take account of depreciation to the pole or other facility that has occurred since the modification. The modifying party or Parties seeking to recover modification costs from Parties that later obtain attachments shall be responsible for maintaining all records regarding modification costs. Qwest shall not be responsible for maintaining records regarding modification costs on behalf of attaching entities.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwest and at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of poles/duct/innerduct completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the poles/duct/innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, poles/duct/innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said poles/duct/innerduct or ROW system and CLEC shall remove its facilities from said poles/duct/innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the poles/duct/innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the poles/duct/innerduct or ROW system, Qwest may perform a reasonable number of inspections. Qwest shall bear the cost of such inspections unless the results of the inspection reveal a material violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section 10.8.2.20; in which case CLEC shall reimburse Qwest the costs of inspections and re-inspections, as required. CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be

billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an Order for cause, or if CLEC terminates an Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its facilities from the poles/duct/innerduct within sixty (60) calendar days, or cause Qwest to remove its facilities from the poles/ duct/innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's poles/duct/innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Access Agreement by which Qwest conveys a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to Qwest or its predecessor.

10.8.2.19 Qwest may abandon or sell any poles/innerduct, duct/conduit or ROW at any time by giving written notice to CLEC. Any poles, innerduct, duct/conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of poles/innerduct, duct/conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the poles/innerduct, duct/conduit or ROW pursuant to its existing rights under this Agreement if the poles/innerduct, duct/conduit, or ROW is purchased by another party; 2) purchase the poles/innerduct, duct/conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the poles/innerduct, duct/conduit or ROW at the current market value if no other party purchased the poles/innerduct, duct/conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest, its



Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the poles/duct/innerduct covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from poles/duct/innerduct for other than repair or maintenance purposes, no replacement on the poles/duct/innerduct shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the poles/duct/innerduct has been completed.

10.8.2.22 If any facilities are found attached to poles/duct/innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of \$200.00 per Pole or \$200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive half the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a poles/duct/innerduct application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, innerducts, ducts/conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided however, that any Access

Agreement that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into a separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.

### *10.8.3 Rate Elements*

Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor and the nature of the ROW (i.e., publicly recorded and non-recorded) and the MDU Matrix, which identifies each requested legal agreement between Qwest and a third party who has a multi-unit building in Qwest's possession that relates to Telecommunications Services provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party. Separate Inquiry Fees apply for ROW, poles and duct/conduit /innerduct.

10.8.3.2 Field Verification Fee/Access Agreement Preparation Fee. In the case of poles and duct/innerduct, the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for poles and manholes. In the case of ROW, the Access Agreement Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the Access Agreement for each ROW requested by the CLEC. Field Verification and Access Agreement Preparation Fees shall be billed in advance.

10.8.3.3 Make-Ready Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for access. For innerduct, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, this Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-

Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW, or other circumstances giving rise to such work beyond the simple preparation of one or more Access Agreements. The estimated pre-paid fee shall be billed in advance.

10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 Access Agreement Consideration. A pre-paid fee which constitutes consideration for conveying access to the ROW to CLEC. This fee shall be a one-time (i.e. non-recurring) fee.

#### *10.8.4 Ordering*

There are two (2) steps required before placing an Order for access to ROW, Duct/innerduct and Pole Attachment: Inquiry Review and Field Verification.

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ROW access, pole attachment or duct/innerduct occupancy, Qwest will provide CLEC with Exhibit D. CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on Qwest owned or controlled poles, duct/innerduct and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest. CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibit D.

10.8.4.1.1 Inquiry Review – Duct/Conduit/Innerduct. Qwest will complete the database inquiry and prepare a duct/conduit structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide the ROW Matrix, the MDU Matrix and a copy of all publicly recorded agreements listed in those Matrices to the CLEC within ten (10) days of the request. Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent Regarding Access Agreement form, both of which are included in Exhibit D, Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this Agreement. Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Qwest.

10.8.4.2 Field Verification – Poles Duct/Innerduct and Access Agreement Preparation (ROW). CLEC will review the Inquiry results and determine whether to proceed with field verification for poles/ducts or Access Agreement preparation for ROW. If field verification or Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or Access Agreement Preparation Fee) plus \$10.00 per Access Agreement as consideration for the Access Agreement. Upon payment of the relevant fee and Access Agreement consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for poles, duct/innerduct or ROW: (a) in the case of poles or innerduct/duct/conduit, a field survey and site investigation of the poles or innerduct/duct/conduit, including the preparation of distances and drawings, to determine availability of existing poles/innerduct/duct/conduit; identification of Make-Ready costs required to provide space; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities; (b) in the case of ROW, the completed Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Access Agreement becomes effective to convey the interest identified in the Access Agreement (if any). Any dispute regarding whether a legal agreement conveys a ROW shall be resolved between CLEC and the relevant third party or parties, and such disputes shall not involve Qwest; and/or (c) In the case of poles or duct/innerduct, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. The Attachment 2 quotation shall be valid for ninety (90) calendar days.

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest

with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available duct/innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.3 Order – Poles and Duct/Innerduct. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the fees identified, Qwest will assign the requested space and commence any Make-Ready work which may be required. Qwest will notify CLEC when poles/duct/innerduct are ready.

10.8.4.4 Make-Ready - Estimates of Make-Ready are used to cover actual Make-Ready costs.

10.8.4.4.1 If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate.

10.8.4.4.2 Within fifteen (15) business days of a request, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) calendar days after written notification of the completion of the Make-Ready work.

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after written notification of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for poles, ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all

records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.

#### *10.8.5 Billing*

CLEC agrees to pay the following fees in advance as specified in Attachments 1.A, 1.B, and 2 of Exhibit D: Inquiry Fee, Field Verification Fee, Access Agreement Preparation Fee, Make-Ready Fee, Pole Attachment Fee, Duct/Innerduct Occupancy Fee and Access Agreement Consideration. Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Usage fees for poles/duct/innerduct (i.e., pole attachment fee and duct/innerduct occupancy fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual usage fees for poles/duct/innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for poles/duct/innerduct will be assessed as of January 1 and July 1 of each year. All fees shall be paid within thirty (30) days following receipt of invoices. All fees are not refundable except as expressly provided herein.

#### *10.8.6 Maintenance and Repair*

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected poles/duct/innerduct.

### **Section 13.0 - ACCESS TO TELEPHONE NUMBERS**

13.1 Nothing in this Agreement shall be construed in any manner to limit or otherwise adversely impact either Party's right to request an assignment of any NANP number resources including, but not limited to, Central Office (NXX) codes pursuant to the Central Office Code Assignment Guidelines published by the Industry Numbering Committee ("INC") as INC 95-0407-008 (formerly ICCF 93-0729-010). The latest version of the Guidelines will be considered the current standard.

13.2 Central Office Code Administration has now transitioned to NeuStar. Both Parties agree to comply with Industry guidelines and Commission rules, including those sections requiring the accurate reporting of data to the Central Office Code Administrator.

13.3 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide (LERG) to recognize and route traffic to the other Party's assigned NXX codes. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities. The Parties will cooperate to establish procedures to ensure the timely activation of NXX assignments in their respective networks.

13.4 Each Party is responsible for administering NXX codes assigned to it. Each Party is responsible for updating the LERG data for NXX codes assigned to its switches. Each Party shall use the LERG published by Telcordia or its successor for obtaining routing information and shall provide through an authorized LERG input agent, all required information regarding its network for maintaining the LERG in a timely manner.

13.5 Each Party shall be responsible for notifying its end users of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs or new NXX codes.

#### **Section 14.0 - LOCAL DIALING PARITY**

14.1 The Parties shall provide local dialing parity to each other as required under Section 251(b)(3) of the Act. Qwest will provide local dialing parity to competing providers of telephone exchange service and telephone toll service, and will permit all such providers to have non-discriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays. The CLEC may elect to route all of its end-user customers' calls in the same manner as Qwest routes its end-user customers' calls, for a given call type (e.g., 0, 0+, 1+, 411), or the CLEC may elect to custom route its end-user customers' calls differently than Qwest routes its end user's calls. Additional terms and conditions with respect to customized routing are described in Sections 9.12 of this Agreement. Customized Routing may be ordered as an application with Resale or Unbundled Local Switching.

#### **APPENDIX A-2**

#### **Exhibit D**

**Date General Information Provided by Qwest:** \_\_\_\_\_

**General Agreement :** \_\_\_\_\_

**BAN Number(must be assigned before processing):** \_\_\_\_\_

#### **REVISED QWEST RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE 7/18/00**

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain CLEC's facilities ("Facilities") to Qwest Corporation's ("Qwest") Poles, to place Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to Qwest's private right of way ("ROW"), to the extent Qwest has the right to grant such access. This General Information is necessary to determine if Qwest can meet the needs of the CLEC's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct". Quotes are effective for thirty (30) days.
2. **PROCESS.** The Qwest process is designed to provide the CLEC the information so as to assist CLEC and Qwest to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

2.1 Inquiry Review - Attachment 1.A (Database Search). The CLEC is requested to review this document and return Attachment 1.A along with two copies of a map and the nonrefundable Inquiry Fee, calculated in accordance with Attachment 1.A hereto. These fees are intended to cover Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, setting up an account, and determining time frames for completion of each task to meet the CLEC's Request. Be sure a BAN number is assigned by the Product Manager (call 303-896-3194 or 0789) before sending Attachment 1.A.

As indicated on Attachment 1.A, a copy of the signed Attachment and maps of the desired route must be sent to the Product Manager while the fee must be sent to the Qwest CLEC Joint Use Manager with the original signed Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be legible and identify all significant geographic characteristics including, but not limited to, the following: Qwest central offices, streets, cities, states, lakes, rivers, mountains, etc. Qwest reserves the right to reject illegible or incomplete maps. If CLEC wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps. For ROW: Section, Range and Township, to the ¼section must also be provided.

Qwest will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation (Attachment 1.B) to the CLEC generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, Qwest will assign a Field Engineer and provide his/her name and phone number to the CLEC. The Field engineer will check the local database and be available for a joint verification with the CLEC. This time frame is applicable to the standard inquiry of one hundred (100) Poles or fewer, or thirty (30) Utility Hole sections or fewer, or two (2) miles of linear ROW or less. The Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of Qwest facilities and does not indicate whether space is available. The resulting information is provided with Attachment 1.B.

In the case of ROW, Qwest will prepare and return a ROW information matrix and a copy of all publicly recorded agreements listed in the ROW Matrix, within ten (10) days. The ROW Matrix will identify (a) the owner of the ROW as reflected in Qwest's records, and (b) the nature of each ROW (i.e., publicly recorded and non-recorded). The ROW information matrix will also indicate whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

In the case of MDUs, Qwest will prepare and return an MDU information matrix, within ten (10) days, which will identify (a) the owner of the MDU as reflected in Qwest's records, and (b) whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its



records, and CLEC acknowledges that the original landowner may not be the current owner of the property.

Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent Regarding Access Agreement form, both of which are included in Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC.

If there is no other effective agreement (i.e., an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 Attachment 1.B (Verification) & Attachment 4 (Access Agreement Preparation). With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the CLEC, Qwest will conduct facilities verification and provide the requested information which may or may not include the following: a review of public and/or internal Qwest right-of-ways records for restrictions, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the CLEC, if applicable, prior to installing its facilities. In the case of Poles, Attachment 1.B orders the field verification which may be done jointly. A copy of the signed Attachment 1.B should be sent to the Product Manager while the appropriate fees should be sent to the Qwest-CLEC Joint Use Manager with the original signed Attachment 1.B. Upon completion of the verification, Attachment 2 will be sent to the CLEC by Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the CLEC an executed and acknowledged Access Agreement to the CLEC in the form attached hereto as Attachment 4 (the "Access Agreement"). In the event that the ROW in question was created by a publicly recorded document and Qwest has a copy of such document in its files, a copy of the Easement Agreement, as defined in the Access Agreement, will be attached to the Access Agreement and provided to the CLEC at the time of delivery CLEC of the Access Agreement. If the ROW was created by a document that is not publicly recorded, or if Qwest does not have a copy of the Easement Agreement in its possession, the Access Agreement will not have a copy of the Easement Agreement attached.

Qwest is required to respond to each Attachment 1.B. submitted by CLEC within 35 days of receiving the Attachment 1.B. To the extent that an Attachment 1.B. includes a large number of poles (greater than 100 poles) or a large amount of conduit, innerduct (greater than 30 manholes) or ROW (greater than 2 linear miles), Qwest is required to approve or deny access commencing no later than 35 days after receiving Attachment 1.B., and Qwest is required to approve or deny access on a rolling basis, i.e., at the time Qwest determines the propriety of such access to such poles, conduit, innerduct or

ROW, so that CLEC is not required to wait until all poles, conduit, innerduct or ROW in a particular Attachment 1.B. are/is approved or denied prior to being granted any access at all.

In the case of ROW, after Qwest has delivered the Access Agreement, the CLEC will be required to obtain the property owner's notarized signature on the Consent that is a part of the Access Agreement. Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the CLEC is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement. If Qwest does not have a copy of the Easement Agreement in its records, it is the responsibility of the CLEC to obtain a copy of the Easement Agreement. After the CLEC has obtained the properly executed and acknowledged Consent: (a) if the ROW was created by a publicly recorded document, the CLEC must record the Access Agreement (with the Consent and the Easement Agreement attached) in the real property records of the county in which the property is located; (b) if the ROW was created by a grant or agreement that is not publicly recorded, (i) CLEC must provide Qwest with a copy of the properly executed and acknowledged Consent, and (ii) upon receipt of such Consent, Qwest will provide the CLEC with a copy of the Easement Agreement with the monetary terms redacted; or (c) if the ROW was created by a non-publicly recorded document, but Qwest does not have a copy of the Easement Agreement in its possession, the CLEC must obtain a copy of the Easement Agreement or other suitable documentation reasonably satisfactory to Qwest to describe the real property involved and the underlying rights giving rise to the Access Agreement.

2.3 Poles/Duct Order Attachment 2 (Access). In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, Qwest will provide the CLEC a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the CLEC and applicable payment for the Make-Ready Fees identified, Qwest will assign the CLEC's requested space; Qwest will also commence the Make-ready work within 30 days following payment of the Make-Ready Fees. Qwest will notify CLEC when Poles/Innerduct are ready for attachment or placement of Facilities. A copy of the signed Attachment 2 form should go to the Product Manager while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked". Qwest will consider repair or clearing damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The CLEC may contract separately with a Qwest-approved contractor to complete the construction provided a Qwest inspector inspects the work during and after construction. Construction attaching to or entering Qwest-owned structure must conform to Qwest standards. If other parties benefit from construction, the costs may be divided

among the beneficiaries. Construction costs are not included in Attachment 2. The CLEC is not encouraged to sign the access agreement (Attachment 2) until provisions have been made for construction.

2.4 Provision of ROW/Poles/Innerduct. Qwest agrees to issue to CLEC for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing CLEC to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned or controlled by Qwest. Qwest provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to CLEC shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the CLEC.

The costs included in the Poles/Innerduct Verification Fee are used to cover the costs incurred by Qwest in determining if Poles/Innerduct space is available to meet the CLEC's request; however, the CLEC must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If Qwest denies access, Qwest shall do so in writing, specifying the reasons for denial within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the Access Agreement. In the event that complications arise with respect to preparing the Access Agreement or any other aspect of conveying access to Qwest's ROW, the CLEC agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.

### 3. **DISPUTE RESOLUTION**

3.1. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

34. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

**ATTACHMENT 1. A**  
**Poles/Innerduct/ or ROW Inquiry Preparation Fee**

General Agreement \_\_\_\_\_

BAN Number (must be assigned before processing): \_\_\_\_\_

Date Submitted: \_\_\_\_\_ Date Replied to CLEC: \_\_\_\_\_

CLEC Name \_\_\_\_\_

Contact name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

e-mail address: \_\_\_\_\_

State or location of  
inquiry: \_\_\_\_\_

Qwest Account Mgr: \_\_\_\_\_

Acct Mgr Phone: \_\_\_\_\_

**Poles/Innerduct Permit Database Search Costs Quotation**

(One Mile Minimum)

Costs

Est. Miles

Total

1. Pole Inquiry Fee (see attached pricing chart) X \_\_\_\_\_ = \$ \_\_\_\_\_

2. Innerduct Inquiry Fee (see attached pricing chart) X \_\_\_\_\_ = \$ \_\_\_\_\_

3. ROW Records Inquiry (see attached pricing chart) X \_\_\_\_\_ = \$ \_\_\_\_\_

4. Estimated Interval for Completion of Items 1, 2 and/or 3: 10 Days

5. Additional requirements of CLEC: \_\_\_\_\_

This Inquiry will result in (a) for Poles and Innerduct: a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW a ROW identification matrix, and quote of the charges for preparation of, and consideration for, the necessary Access Agreements. For Poles, the name and telephone number of the Field Engineer will be provided so that the CLEC may contact the Qwest Field engineer and discuss attachment plans. If a field verification of poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such Poles/Innerduct.

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

This signed form (original) should be sent with a check for the Inquiry amount (\$X per mile) to:  
**Pam Fisher, Qwest Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112 303-792-6990**

A copy of this form should be sent with two acceptably-detailed maps showing the requested route to:

**John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202  
303-896-0789**

## ATTACHMENT 1.B

General Agreement No. \_\_\_\_\_

BAN Number: \_\_\_\_\_

### Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation

Date Nonrefundable Received: \_\_\_\_\_

Date Replied to CLEC: \_\_\_\_\_

**\*\*NOTE: THIS ATTACHMENT WILL BE COMPLETED BY QWEST AND SENT TO THE CLEC FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.\*\***

Charge	Estimated Costs	Number	Total
1. Pole Field Verification Fee (10 pole minimum)	_____	_____	\$_____
2. Innerduct Field Verification Fee	_____	_____	\$_____
3. Access Agreement Preparation and Consideration			
	\$___ per Access Agreement	_____	\$_____
4. Estimated Interval for Completion of Items 1, 2 and/or 3:	_____ Working Days		
5. Additional requirements of CLEC:	_____		

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By signing below and providing payment of the Total Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its field survey/preparation of Access Agreements, and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such ROW/Poles/Innerduct. The CLEC acknowledges the above costs are estimates only and CLEC may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested.

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

A copy of this form signed form should be sent to:

**John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

The original signed form should be sent with a check for the verification amount to:

**Pam Fisher, Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112**



## SCHEDULE A—PRICING CHART

### INQUIRY, VERIFICATION, UNAUTHORIZED ATTACHMENT RATES BY STATE

#### Inquiry and Verification, Poles and Ducts

STATE	POLE INQUIRY** per mile	DUCT INQUIRY per mile	POLE VERIFICATION per pole	DUCT VERIFICATION per manhole
AZ	\$326.04	\$391.91	\$36.21	\$470.74
CO	\$366.42	\$440.45	\$40.70	\$529.04
ID	\$323.69	\$389.09	\$35.95	\$ 467.35
IA	\$346.86	\$416.94	\$38.52	\$500.80
MN	\$343.05	\$412.36	\$38.10	\$495.30
MT	\$328.81	\$395.24	\$36.52	\$474.74
NE	\$340.10	\$408.81	\$37.77	\$491.03
NM	\$337.43	\$405.60	\$37.48	\$487.18
ND	\$316.08	\$379.94	\$35.10	\$456.36
OR*	\$317.43	\$381.54	\$35.26	\$458.26
SD	\$334.10	\$401.60	\$37.11	\$482.37
UT	\$354.72	\$426.39	\$39.40	\$512.15
WA*	\$290.03	\$348.63	\$32.21	\$418.75
WY	\$330.87	\$397.72	\$36.75	\$477.71

\* ordered rates by the state commission.

\*\* Rates for Right of Way (ROW) are under development

#### Unauthorized Attachments

Oregon: Sanctions for unauthorized attachments will comply with House Rule 860.

Utah, Idaho, Washington: Unauthorized attachment charges will be \$200.00 per pole or innerduct segment between manholes.

All other states: Unauthorized attachment charges will be according to Section 9.1 of Attachment 3 or 10.8.2.22 of the SGAT.

**SCHEDULE B—Access Rates****RATES BY STATE**

STATE	POLE per pole, per foot per year	DUCT per foot per year
AZ	\$4.29	\$0.36
CO	\$2.49	\$0.30
ID	\$3.56	\$ 0.25
IA	\$2.77	\$ 0.19
MN	\$2.12	\$ 0.22
MT	\$2.62	\$ 0.32
NE	\$2.73	\$ 0.28
NM	\$3.06	\$ 0.33
ND	\$6.01	\$ 0.33
OR*	\$4.36	\$ 0.44
SD	\$4.09	\$ 0.28
UT	\$2.46	\$0.33
WA*	\$2.98	\$ 0.38
WY	\$0.74	\$ 0.27

\* ordered rates by the state commission.

\*\* Utah Law governs Pole attachment and Conduit Rates. At present (7/26/00) Qwest has tariffed Pole attachment rates for cable companies which is also available for telecommunication carriers through 2/8/01. No conduit rate has been established by the Utah PUC-- the rate shown here is determined by the FCC formula.

**ATTACHMENT 2****Poles/Innerduct Order**

General Agreement \_\_\_\_\_

BAN Number: \_\_\_\_\_

**\*\*NOTE: THIS FORM WILL BE COMPLETED BY QWEST AND SENT TO CLEC FOR SIGNATURE\*\***

Make-ready Work required: Yes (       ) No (       )  
Received \_\_\_\_\_

Date \_\_\_\_\_

If Yes is checked, estimated Make-ready costs: \$ \_\_\_\_\_

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - \_\_\_\_\_.
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, CLEC must:
  - a. provide Qwest representative, a final design of splice, racking and slack locations in Qwest utility holes.
  - b. tag all equipment located in/on Qwest's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) CLEC's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	<u>Annual Charge</u>	<u>Quantity</u>	<u>Total Annual Charge</u>
1. Pole Attachment, Per Pole	\$ _____ /	_____	\$ _____
2. Innerduct Occupancy, Per Foot	\$ _____	_____	\$ _____
Total Annual Recurring Charges			\$ _____

For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you do not place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2000 HAS BEEN PRORATED TO \_\_\_\_\_ ( /DAY \* DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2000 RECURRING FEE ALONG WITH THIS SIGNED ORDER \_\_\_\_\_

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge (or, if CLEC requests Semiannual billing, then the first half-year's prorated Semiannual Recurring Charge), the CLEC desires Qwest to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions

under which Qwest offers such Poles/Innerduct. By signing this document you are agreeing to the access described herein.

Return this signed form and check to: Pam Fisher, **Qwest CLEC Joint Use, Suite 101, 6912 S. Quentin, Englewood, CO 80112**. Send a copy to: John Carveth, **Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

## ATTACHMENT 3

General Agreement:\_\_\_\_\_

### **QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL TERMS AND CONDITIONS**

This is an Agreement between \_\_\_\_\_ ("CLEC") and Qwest Corporation ("Qwest"), for one or more Orders for the CLEC to obtain access to Qwest's Right-of-Way ("ROW") and/or to install/attach and maintain their communications facilities ("Facilities") to Qwest's Poles and/or placement of Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") described in the General Information and CLEC Map, which are incorporated herein by this reference (singularly "Order" or collectively, "Orders"). If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

#### **1. SCOPE.**

- 1.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing CLEC to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned or controlled by Qwest, and/or (b) access to Qwest's ROW to the extent that (i) such ROW exists, and (ii) Qwest has the right to grant access to the CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.
- 1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by CLEC or to obtain any ROW for CLEC's use.
- 1.3 Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. **TERM.** Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Access Agreement (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time CLEC is providing Poles/Innerduct attachments under any Order to this Agreement.

### **3. TERMINATION WITHOUT CAUSE.**

- 3.1 To the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.
- 3.2 Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.
- 3.3 If Qwest terminates this Agreement for Cause, or if CLEC terminates this Agreement without Cause, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause Qwest to remove its Facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.
- 3.4 If this Agreement or any Order is terminated for reasons other than Cause, then CLEC shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed.
- 3.5 Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the CLEC. Upon abandonment of Poles/Innerduct, and with the concurrence of the other CLEC(s), if necessary, CLEC shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

### **4. CHARGES AND BILLING.**

- 4.1. CLEC agrees to pay Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. CLEC shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.

4.2. Qwest has the right to revise Fees, at its sole discretion, upon written notice to CLEC within at least sixty (60) days prior to the end of any annual billing period.

**5. INSURANCE.** The CLEC shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.

5.2. General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the CLEC hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or under-pinning. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.3. Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.4. Qwest may require the CLEC from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by Qwest shall be borne by Qwest, and the CLEC shall arrange to have such costs billed separately and directly to Qwest by the insuring carrier(s). Qwest shall be authorized by the CLEC to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the CLEC's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a whole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.

5.5. The insuring carrier(s) and the form of the insurance policies shall be subject to approval by Qwest. The CLEC shall forward to Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the



ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to Qwest; (3) certification that underground hazard coverage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The CLEC shall not commence work hereunder until the obligations of the CLEC with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the CLEC of any liability hereunder or in any way modify the CLEC's obligations to indemnify Qwest.

- 5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars (\$6,000,000.00). In addition, said policy shall name Qwest and the CLEC/SubCLEC on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.
- 5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

## **6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.**

- 6.1 Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a Qwest spare conduit include the placement of innerduct, Qwest retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before CLEC's Facilities can be accommodated, the cost of such modification will be included in the CLEC's nonrecurring charges for the associated Poles/Innerduct Order.
- 6.2 CLEC shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and Qwest does not warrant or represent that providing CLEC with access to the Poles/Innerduct in any way constitutes such legal right. The CLEC shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the CLEC's sole expense, in order to perform its obligations under this Agreement. The CLEC shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission

required to perform the work prior to entering the property or starting any work thereon and shall provide Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The CLEC shall comply with all conditions of rights-of-way and Orders.

- 6.3 CLEC's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Qwest premises. CLEC's procedures governing its standards maintenance practices for Facilities shall be made available to Qwest upon written request. CLEC shall within thirty (30) days comply and provide the requested information to Qwest to bring their facilities into compliance with these terms and conditions.
- 6.4. In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.
- 6.5 In the event of an infrastructure outage, the CLEC should contact their Network Maintenance Center at 1-800-223-7881 or the CLEC may contact their Account Manager at the Interconnect Service Center.

## **7. MODIFICATION TO EXISTING POLES/INNERDUCT.**

- 7.1. If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the CLEC and Qwest determines in its sole discretion to provide the requested capacity, the CLEC shall pay Qwest the total replacement cost, Qwest's cost to transfer its attachments, as necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in Qwest. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and CLEC shall be responsible for its pro

rata share of the modification cost. Except as set forth herein, CLEC shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

- 7.2 Written notification of modification initiated by or on behalf of Qwest shall be provided to CLEC at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not rearrange its facilities within sixty (60) days after receipt of written notice from Qwest requesting such rearrangement, Qwest may perform or cause to have performed such rearrangement and CLEC shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

**8. INSPECTION OF FACILITIES.** Qwest reserves the right to make final construction, subsequent and periodic inspections of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the cost of such inspections except as specified in Section 8 hereof.

- 8.1. CLEC shall provide written notice to Qwest, at least fifteen (15) days in advance, of the locations where CLEC's plant is to be constructed.
- 8.2. The CLEC shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to Qwest within five (5) business days of the date(s) of the occupancy.
- 8.3. Qwest shall provide written notification to CLEC within seven (7) days of the date of completion of a final construction inspection.
- 8.4. Where final construction inspection by Qwest has been completed, CLEC shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct system, unless Qwest has provided CLEC a written extension to comply. CLEC shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, Qwest shall perform such corrections and CLEC shall pay Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken may be made by Qwest.
- 8.5. Once the CLECs facilities occupy Qwest Poles/Innerduct system and Exhibit A has been received by Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that CLEC has failed to comply with

the provisions set forth in this Agreement, in which case the CLEC shall reimburse Qwest for full costs of inspection, and re-inspection to determine compliance as required. A CLEC representative may accompany Qwest on field inspections scheduled specifically for the purpose of inspecting CLEC's Facilities; however, CLEC's costs associated with its participation in such inspections shall be borne by CLEC. Qwest shall have no obligation to notify CLEC, and CLEC shall have no right to attend, any routine field inspections.

- 8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the CLEC within thirty (30) days upon completion of the inspection.
- 8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon Qwest, and shall not relieve CLEC of any responsibilities, obligations, or liability arising under this Agreement.

## **9. UNAUTHORIZED FACILITIES**

- 9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, Qwest, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars (\$200.00) per attachment per Pole or innerduct run between manholes, and require the CLEC to submit in writing, within ten (10) day after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Qwest within the specified time period, the CLEC will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, Qwest may remove the CLEC's facilities without liability, and the cost of such removal shall be borne by the CLEC.
- 9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not CLEC is ordered to continue the occupancy of the Poles/Innerduct system.
- 9.3. No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by Qwest of any of its rights of privileges under this Agreement or otherwise.

- 10. **REMOVAL OF FACILITIES.** Should Qwest, under the provisions of this Agreement, remove CLEC's Facilities from the Poles/Innerduct covered by any Order (or otherwise), Qwest will deliver the Facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If payment is not received by Qwest within thirty (30) days, CLEC will be deemed to have abandoned such facilities, and Qwest may dispose of said facilities as it determines to be appropriate. If Qwest must dispose of said facilities, such action will not relieve CLEC of any other financial

responsibility associated with such removal as provided herein. If CLEC removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the CLEC shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to Qwest for previous occupancy have been paid in full. CLEC shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by CLEC," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by CLEC," each as attached hereto, advising Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

- 11. INDEMNIFICATION AND LIMITATION OF LIABILITIES.** CLEC shall indemnify and hold harmless Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the CLEC; (2) actual or alleged fault or negligence of the CLEC, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by CLEC under this Contract or any product liability claims relating to any material supplied by CLEC under this Contract; (4) failure of CLEC, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by CLEC or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the CLEC. If both Qwest and the CLEC are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the CLEC, if Qwest desires. Qwest shall give the CLEC reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the CLEC's request and at the CLEC's expense all information and assistance available to the Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

- 11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE CLEC ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CLEC, AND THE CLEC EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT**

OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

*11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.*

11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF QWEST WHEN CONCURRENT WITH THAT OF THE CLEC.

11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

## 12. **FORCE MAJEURE**

12.1 The CLEC shall be excused from its performance as to any Order if prevented by acts or events beyond the CLEC's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, Qwest may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

**12.2.2 To terminate already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or**

12.2.3 To suspend already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by Qwest after the contingency occurs. With respect to Qwest's election of Section 12.2.3 above:

12.3.1 Qwest shall give the CLEC written notice of the work to be performed by such other party prior to its performance and shall deduct from the CLEC's price the cost of the work or services actually performed by such other parties.

12.3.2 The CLEC shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

12.3.3 If appropriate, at the Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 Qwest shall be excused from its performance if prevented by acts or events beyond the Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

### **13. DISPUTE RESOLUTION.**

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

- 13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.
- 13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.
14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The CLEC represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Qwest's pole pursuant to the terms thereof. The CLEC acknowledges that Qwest will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which CLEC shall remain fully liable.
15. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.
16. **GENERAL PROVISIONS.**
- 16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.
- 16.2 This Agreement shall not be assignable by CLEC without the express written consent of Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by CLEC to CLEC's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that CLEC must obtain Qwest's consent in any event.
- 16.3 This Agreement benefits CLEC and Qwest. There are no third party beneficiaries.



- 16.4 This Agreement constitutes the entire understanding between CLEC and Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

CLEC

Signature

JOHN CARVETH

## PRODUCT MANAGER

Date \_\_\_\_\_

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3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit \_\_\_\_, unless a change has been previously authorized in writing by Licensor.

Return to:

In accordance with the terms and conditions of this Agreement between us, dated \_\_\_\_\_, 20\_\_\_\_, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (and/or modified as indicated in Licensee's prior notification to Licensor, dated \_\_\_\_\_, 20\_\_\_\_) effective \_\_\_\_\_.

[illegible]

Name of Co- Provider

By \_\_\_\_\_

Title

Total duct footage\_\_\_\_\_

## EXHIBIT C

NOTIFICATION OF SURRENDER OR MODIFICATION  
OF POLE ATTACHMENT ORDER BY CLEC

CLEC: \_\_\_\_\_

Return to:  
E. Skinner, Qwest Corp  
6912 S. Quentin, Suite 201  
Englewood, CO 80112

In accordance with the terms and conditions of the Agreement between Qwest and CLEC, dated \_\_, 20\_\_, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in CLEC's prior notification to Qwest, dated \_\_\_\_\_, 20\_\_) effective \_\_\_\_\_.

	POLE NO.	ASSOC. POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			

Date Notification Received \_\_\_\_\_

Date Modification Received \_\_\_\_\_

By: \_\_\_\_\_  
CLEC

\_\_\_\_\_  
Name of

Discontinued: \_\_\_\_\_

By: \_\_\_\_\_

Poles \_\_\_\_\_  
Anchors \_\_\_\_\_  
\_\_\_\_\_

Anchor/Guy Strands \_\_\_\_\_ Its: \_\_\_\_\_

**ATTACHMENT 4**  
**FORM OF ACCESS AGREEMENT**

After recording, please return to:

**E. Skinner**

**Qwest Joint Use Group PDR, Suite 201**  
**6912 S Quentin, Englewood, CO 80112**

**ACCESS AGREEMENT**

**THIS ACCESS AGREEMENT** (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2000, by and between **QWEST CORPORATION**, a Colorado corporation, successor in interest to **U S WEST COMMUNICATIONS, INC.**, a Colorado corporation ("Grantor"), whose address \_\_\_\_\_ is \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ ("Grantee").

**RECITALS**

A. This Agreement relates to certain real property (the "Property") located in the County of \_\_\_\_\_ (the "County"), State of \_\_\_\_\_ (the "State").

B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit A (the "Right of Way Agreement").

C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.

D. Subject to the consent of the owner of the Property ("Owner") and on the other terms and conditions set forth in this Agreement, Grantor has agreed to convey to Grantee, without any representation or warranty, the right to use the Easement Rights, and Grantee has agreed to accept such conveyance.



NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. Grant of Right of Access.** Grantor hereby conveys to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, “Authorized Users” of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. “Affiliates” means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. “Person” means an individual, partnership, limited liability company, association, corporation or other entity.

**2. Grantor’s Reserved Rights.** Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights conveyed to Grantee by this Agreement.

**3. Conditions Precedent to Effectiveness of Agreement.** This Agreement is expressly conditioned on the following:

a. **Consent by Owner.** Grantee shall obtain, at its sole cost and expense, a written consent from Owner in the form attached (the “Consent”). The Consent provides, among other things, that Owner shall give notice to Grantor of any default under the Right of Way Agreement and the opportunity to cure such default.

b. **Recordation of Agreement.** If the Right-of-Way Agreement has been publicly recorded, Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement

to Grantor at the address set forth above. An executed and acknowledged Consent and a legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

c. **Payment of Costs and Expenses.** Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating to Grantor's execution and delivery of this Agreement.

**4. Grantee's Representations and Warranties.** Grantee represents and warrants to Grantor that:

a. **Authority.** Grantee is a \_\_\_\_\_, duly formed and validly existing under the laws of the State of \_\_\_\_\_. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. **Due Diligence.** Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

**5. Grantee's Covenants.**

a. **Compliance with Right of Way Agreement.** Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights. In the event Grantee fails to observe or perform any of its obligations under the Right of Way Agreement, Grantor shall have the right, but not the obligation, to perform or observe such obligation to the extent that such obligation can be observed or performed by Grantor.

b. **Compliance with Laws.** Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. **No Further Grant.** Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. **Non-Interference.** Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. **Indemnification.** Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "**Replacement Easement**"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. **Condemnation.** If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

**8. Severable Provisions.** If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**9. Default; Remedies.** (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

**10. Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

**11. No Dedication.** Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

**12. Grantor's Waiver of Confidentiality.** In the event that Owner properly executes the Consent, Grantor hereby waives any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves. Grantor's waiver of rights, subject to the limitation set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or

elsewhere or may have been agreed to orally, and Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. Grantor's waiver is expressly conditioned on Owner's waiver of Owner's confidentiality rights, as set forth in the Consent, which is a part hereof. In the event that Owner does not waive its rights to confidentiality by executing the Consent in the form attached hereto, or if the person executing the Consent does not have the legal right to bind the Owner, Grantor reserves the right (a) to enforce the confidentiality provisions of the Right of Way Agreement, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the breach of such confidentiality provisions, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent.

**13. Notices.** All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

**14. Modification; Counterparts.** This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

**15. Controlling Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**16. Waiver of Jury Trial.** THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**[Signature pages follow]**

**EXECUTED** as of the date first written above.

**GRANTOR:**

Witnessed by: \_\_\_\_\_

QWEST CORPORATION, a Colorado corporation,  
successor in interest to  
U S WEST COMMUNICATIONS, INC.,  
a Colorado corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

)

) ss:

COUNTY OF \_\_\_\_\_

)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2000, by \_\_\_\_\_ as  
\_\_\_\_\_ of QWEST CORPORATION, a  
Colorado corporation.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_

Notary Public

My Commission Expires:

\_\_\_\_\_

**EXECUTED** as of the date first written above.

**GRANTEE:**

Witnessed by: \_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2000, by \_\_\_\_\_ as  
\_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



## CONSENT REGARDING ACCESS AGREEMENT

THE UNDERSIGNED, \_\_\_\_\_, a \_\_\_\_\_  
 (“Owner”), whose address is \_\_\_\_\_, hereby consents to the  
 terms of the following paragraphs regarding the foregoing Access Agreement (the “Agreement”).  
 This Consent is attached to and made a part of the Agreement, and capitalized terms used in this  
 Consent, if not otherwise defined, have the same meaning as in the Agreement.

**FOR TEN DOLLARS (\$10)** and other good and valuable consideration, the receipt and  
 sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title  
 to the Property described in the Right of Way Agreement attached to the Agreement as Exhibit A  
 or, if no description of the Property is given in the Right of Way Agreement, then (b) that Owner  
 is the grantor, or the successor to or assignee of the grantor, of the Easement Rights under the  
 Right of Way Agreement. Owner further represents and warrants that Owner has the legal right  
 to execute this Consent, including, without limitation, the right to waive the confidentiality of the  
 Right of Way Agreement as set forth in Section 3 of this Consent and the right to bind Owner to  
 grant the notice and cure period as set forth in Section 4 of this Consent.
2. Owner’s Acknowledgments. Owner expressly acknowledges that (a) Owner has received and  
 reviewed a copy of the foregoing Agreement; (b) this is a legal document that may affect  
 Owner’s rights and Owner was given the opportunity to have the Agreement and this Consent  
 reviewed by Owner’s attorney; (c) if the Agreement has been publicly recorded, the Agreement,  
 with this Consent attached, will be recorded in the real property records of the County and will  
 become a public record, and Owner, by signing this Consent, waives any rights it may to keep  
 the terms and provisions of the Agreement and the Right of Way Agreement confidential; and  
 (d) Owner understands that it is neither illegal nor a violation of the Right of Way Agreement  
 with Grantor for Owner to enter into a right-of-way agreement, including the Agreement, with a  
 telecommunications carrier, as defined in 47 U.S.C. § 224, such as Grantee.
3. Owner’s Waiver of Confidentiality. Owner hereby waives any right it may have to keep the  
 terms and conditions of the Agreement and/or the Right of Way Agreement confidential, whether  
 or not such right to confidentiality is expressly set forth in the Agreement, the Right of Way  
 Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to  
 assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or  
 Grantee, based upon or arising out of Owner’s alleged right to confidentiality relating to the  
 Agreement or the Right of Way Agreement. **Owner understands that Qwest does not agree to  
 waive the confidentiality of the dollar amounts set forth in any Right of Way Agreement,  
 and acknowledges that Owner has no right to provide copies of such Right of Way  
 Agreements to any party unless Owner has completely deleted the dollar amounts.**

4. Notice and Cure Period. Notwithstanding anything to the contrary contained in the Right of Way Agreement, Owner shall not commence any action or otherwise pursue any right or remedy under, or take any steps to terminate, the Right of Way Agreement due to a default by Grantee under the terms and provisions of the Right of Way Agreement unless written notice by Owner specifying such default is given to Grantor and Grantee. Owner agrees that Grantor shall have the right, but shall not be obligated, to cure such default within thirty (30) days after notice, or, if such default cannot reasonably be cured in such 30-day period, Grantor shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Owner further agrees not to invoke any of its remedies, either express or implied, under the Right of Way Agreement, unless such default shall remain uncured following such notice and grace period.

5. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

**EXECUTED** as of the date first written above.

**OWNER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Consent was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2000, by \_\_\_\_\_ as  
\_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## CONSENT TO DISCLOSURE

**THE UNDERSIGNED**, \_\_\_\_\_, a \_\_\_\_\_  
 (“Owner”), whose address is \_\_\_\_\_, hereby consents to the  
 terms of the following paragraphs regarding the attached MDU Agreement (the “Agreement”).

**FOR TEN DOLLARS (\$10)** and other good and valuable consideration, the receipt and  
 sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Agreement attached hereto or, if no description of the Property is given in the Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights, if any, under the Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Agreement as set forth in Section 3 of this Consent.
2. Owner’s Acknowledgments. Owner expressly acknowledges that (a) this is a legal document that may affect Owner’s rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner’s attorney; and (b) Owner, by signing this Consent, waives any rights it may to keep the terms and provisions of the Agreement confidential.
3. Owner’s Waiver of Confidentiality. Owner hereby waives any right it may have to keep the terms and conditions of the Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner’s alleged right to confidentiality relating to the Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Agreement, and acknowledges that Owner has no right to provide copies of such Agreements to any party unless Owner has completely deleted the dollar amounts.**
4. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

**EXECUTED** as of the date first written above.

**OWNER:**

\_\_\_\_\_ ,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing Consent was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

Witness my hand and official seal.

(SEAL)

Notary Public

My Commission Expires:

**EXHIBIT 1**

**Right of Way Agreement**

(This represents the ROW agreement between the Co-Provider and the property owner)

## **APPENDIX A-3**

### **Alternative Language for Third Paragraph of Section 2.2 of Exhibit D**

Qwest is required to respond to each Attachment 1.B. submitted by CLEC within 35 days of receiving the Attachment 1.B. No more than 300 poles shall be the subject of any single pole attachment Order. No more than 20 manholes shall be the subject of any single conduit occupancy Order. No more than three (3) miles shall be the subject of any single ROW Order not relating to multi-unit buildings. This provision assumes a maximum of seventeen (17) properties per mile or fifty-one (51) owners in three (3) miles. No more than one campus shall be the subject of any single Order for access to ROW within multi-unit buildings. This provision assumes a maximum of fifteen (15) buildings.

**APPENDIX B**  
**LIST OF REPORT ACRONYMS**

AIN	Advanced Intelligence Network
BOC	Bell Operating Company
CLEC	Competitive Local Exchange Carrier
CNAM	Calling Name Assistance Database
FCC	Federal Communications Commission
ICA	Interconnection Agreement
ICDF	Interconnection Distribution Frame
ILEC	Incumbent Local Exchange Carrier
IMA-EDI	Interconnect Mediated Access – Electronic Data Interchange
IMA-GUI	Interconnect Mediated Access – Graphical User Interface
LATA	Local Access Transport Area
LEC	Local Exchange Carrier
LRN	Local Routing Number
MDU	Multiple Dwelling Units
MTE	Multi-Tenant Environment
OSS	Operations Support Systems
PMA	Performance Measures Audit
RBOC	Regional Bell Operating Company
ROC	Regional Oversight Committee
ROW	Right-of-Way
SCE	Service Creation Environment



SGAT	Statement of Generally Available Terms
SMS -	Service Management Systems
SPOT -	Single Point of Termination (Frame)
STP -	Signaling Transfer Point
UNE -	Unbundled Network Elements
<b>UNE-P</b>	<b>Unbundled Network Element Platforms</b>